

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JULY 6, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2081**

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**Introduced by Assembly Member Allen  
(Principal coauthor: Assembly Member V. Manuel Pérez)**

February 23, 2012

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An act to amend, repeal, and add Section 25102 of the Corporations Code, relating to securities transactions, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2081, as amended, Allen. Securities transactions: qualification requirements: exemptions.

Existing law, the Corporate Securities Law of 1968, requires certain securities offered or sold in this state to be qualified through application filed with the Commissioner of Corporations, or to be exempt from the qualification requirements. Existing law exempts offers and sales of securities in specified transactions including, but not limited to, offers made to no more than 35 persons, excluding accredited investors, as defined by reference to Regulation D promulgated under the federal Securities Act of 1933, as amended, to include specified minimum net worth and income requirements for prospective investors.

This bill would, until January 1, 2016, exempt from qualification offerings or sales of securities using a general solicitation or general advertising, provided the transaction meets specified requirements, including a requirement that the sales are made to accredited investors and the aggregate offering price of securities, as defined by reference to Regulation D, does not exceed \$1,000,000, less the aggregate offering price for all securities sold within 12 months, as specified.

*This bill would incorporate additional changes in Section 25102 of the Corporations Code proposed by SB 978, that would become operative only if SB 978 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25102 of the Corporations Code is  
2 amended to read:  
3 25102. The following transactions are exempted from the  
4 provisions of Section 25110:  
5 (a) Any offer (but not a sale) not involving any public offering  
6 and the execution and delivery of any agreement for the sale of  
7 securities pursuant to the offer if (1) the agreement contains  
8 substantially the following provision: "The sale of the securities  
9 that are the subject of this agreement has not been qualified with  
10 the Commissioner of Corporations of the State of California and  
11 the issuance of the securities or the payment or receipt of any part  
12 of the consideration therefor prior to the qualification is unlawful,  
13 unless the sale of securities is exempt from the qualification by  
14 Section 25100, 25102, or 25105 of the California Corporations  
15 Code. The rights of all parties to this agreement are expressly  
16 conditioned upon the qualification being obtained, unless the sale  
17 is so exempt"; and (2) no part of the purchase price is paid or  
18 received and none of the securities are issued until the sale of the  
19 securities is qualified under this law unless the sale of securities  
20 is exempt from the qualification by this section, Section 25100,  
21 or 25105.

1 (b) Any offer (but not a sale) of a security for which a  
2 registration statement has been filed under the Securities Act of  
3 1933 but has not yet become effective, or for which an offering  
4 statement under Regulation A has been filed but has not yet been  
5 qualified, if no stop order or refusal order is in effect and no public  
6 proceeding or examination looking toward an order is pending  
7 under Section 8 of the act and no order under Section 25140 or  
8 subdivision (a) of Section 25143 is in effect under this law.

9 (c) Any offer (but not a sale) and the execution and delivery of  
10 any agreement for the sale of securities pursuant to the offer as  
11 may be permitted by the commissioner upon application. Any  
12 negotiating permit under this subdivision shall be conditioned to  
13 the effect that none of the securities may be issued and none of  
14 the consideration therefor may be received or accepted until the  
15 sale of the securities is qualified under this law.

16 (d) Any transaction or agreement between the issuer and an  
17 underwriter or among underwriters if the sale of the securities is  
18 qualified, or exempt from qualification, at the time of distribution  
19 thereof in this state, if any.

20 (e) Any offer or sale of any evidence of indebtedness, whether  
21 secured or unsecured, and any guarantee thereof, in a transaction  
22 not involving any public offering.

23 (f) Any offer or sale of any security in a transaction (other than  
24 an offer or sale to a pension or profit-sharing trust of the issuer)  
25 that meets each of the following criteria:

26 (1) Sales of the security are not made to more than 35 persons,  
27 including persons not in this state.

28 (2) All purchasers either have a preexisting personal or business  
29 relationship with the offeror or any of its partners, officers,  
30 directors or controlling persons, or managers (as appointed or  
31 elected by the members) if the offeror is a limited liability  
32 company, or by reason of their business or financial experience or  
33 the business or financial experience of their professional advisers  
34 who are unaffiliated with and who are not compensated by the  
35 issuer or any affiliate or selling agent of the issuer, directly or  
36 indirectly, could be reasonably assumed to have the capacity to  
37 protect their own interests in connection with the transaction.

38 (3) Each purchaser represents that the purchaser is purchasing  
39 for the purchaser's own account (or a trust account if the purchaser

1 is a trustee) and not with a view to or for sale in connection with  
2 any distribution of the security.

3 (4) The offer and sale of the security is not accomplished by  
4 the publication of any advertisement. The number of purchasers  
5 referred to above is exclusive of any described in subdivision (i),  
6 any officer, director, or affiliate of the issuer, or manager (as  
7 appointed or elected by the members) if the issuer is a limited  
8 liability company, and any other purchaser who the commissioner  
9 designates by rule. For purposes of this section, a husband and  
10 wife (together with any custodian or trustee acting for the account  
11 of their minor children) are counted as one person and a  
12 partnership, corporation, or other organization that was not  
13 specifically formed for the purpose of purchasing the security  
14 offered in reliance upon this exemption, is counted as one person.  
15 The commissioner may by rule require the issuer to file a notice  
16 of transactions under this subdivision.

17 The failure to file the notice or the failure to file the notice within  
18 the time specified by the rule of the commissioner shall not affect  
19 the availability of this exemption. An issuer who fails to file the  
20 notice as provided by rule of the commissioner shall, within 15  
21 business days after discovery of the failure to file the notice or  
22 after demand by the commissioner, whichever occurs first, file the  
23 notice and pay to the commissioner a fee equal to the fee payable  
24 had the transaction been qualified under Section 25110.

25 (g) Any offer or sale of conditional sale agreements, equipment  
26 trust certificates, or certificates of interest or participation therein  
27 or partial assignments thereof, covering the purchase of railroad  
28 rolling stock or equipment or the purchase of motor vehicles,  
29 aircraft, or parts thereof, in a transaction not involving any public  
30 offering.

31 (h) Any offer or sale of voting common stock by a corporation  
32 incorporated in any state if, immediately after the proposed sale  
33 and issuance, there will be only one class of stock of the  
34 corporation outstanding that is owned beneficially by no more than  
35 35 persons, provided all of the following requirements have been  
36 met:

37 (1) The offer and sale of the stock is not accompanied by the  
38 publication of any advertisement, and no selling expenses have  
39 been given, paid, or incurred in connection therewith.

1 (2) The consideration to be received by the issuer for the stock  
2 to be issued consists of any of the following:

3 (A) Only assets (which may include cash) of an existing business  
4 enterprise transferred to the issuer upon its initial organization, of  
5 which all of the persons who are to receive the stock to be issued  
6 pursuant to this exemption were owners during, and the enterprise  
7 was operated for, a period of not less than one year immediately  
8 preceding the proposed issuance, and the ownership of the  
9 enterprise immediately prior to the proposed issuance was in the  
10 same proportions as the shares of stock are to be issued.

11 (B) Only cash or cancellation of indebtedness for money  
12 borrowed, or both, upon the initial organization of the issuer,  
13 provided all of the stock is issued for the same price per share.

14 (C) Only cash, provided the sale is approved in writing by each  
15 of the existing shareholders and the purchaser or purchasers are  
16 existing shareholders.

17 (D) In a case where after the proposed issuance there will be  
18 only one owner of the stock of the issuer, only any legal  
19 consideration.

20 (3) No promotional consideration has been given, paid, or  
21 incurred in connection with the issuance. Promotional consideration  
22 means any consideration paid directly or indirectly to a person  
23 who, acting alone or in conjunction with one or more other persons,  
24 takes the initiative in founding and organizing the business or  
25 enterprise of an issuer for services rendered in connection with the  
26 founding or organizing.

27 (4) A notice in a form prescribed by rule of the commissioner,  
28 signed by an active member of the State Bar of California, is filed  
29 with or mailed for filing to the commissioner not later than 10  
30 business days after receipt of consideration for the securities by  
31 the issuer. That notice shall contain an opinion of the member of  
32 the State Bar of California that the exemption provided by this  
33 subdivision is available for the offer and sale of the securities. The  
34 failure to file the notice as required by this subdivision and the  
35 rules of the commissioner shall not affect the availability of this  
36 exemption. An issuer who fails to file the notice within the time  
37 specified by this subdivision shall, within 15 business days after  
38 discovery of the failure to file the notice or after demand by the  
39 commissioner, whichever occurs first, file the notice and pay to  
40 the commissioner a fee equal to the fee payable had the transaction

1 been qualified under Section 25110. The notice, except when filed  
2 on behalf of a California corporation, shall be accompanied by an  
3 irrevocable consent, in the form that the commissioner by rule  
4 prescribes, appointing the commissioner or his or her successor in  
5 office to be the issuer's attorney to receive service of any lawful  
6 process in any noncriminal suit, action, or proceeding against it  
7 or its successor that arises under this law or any rule or order  
8 hereunder after the consent has been filed, with the same force and  
9 validity as if served personally on the issuer. An issuer on whose  
10 behalf a consent has been filed in connection with a previous  
11 qualification or exemption from qualification under this law (or  
12 application for a permit under any prior law if the application or  
13 notice under this law states that the consent is still effective) need  
14 not file another. Service may be made by leaving a copy of the  
15 process in the office of the commissioner, but it is not effective  
16 unless (A) the plaintiff, who may be the commissioner in a suit,  
17 action, or proceeding instituted by him or her, forthwith sends  
18 notice of the service and a copy of the process by registered or  
19 certified mail to the defendant or respondent at its last address on  
20 file with the commissioner, and (B) the plaintiff's affidavit of  
21 compliance with this section is filed in the case on or before the  
22 return day of the process, if any, or within the further time as the  
23 court allows.

24 (5) Each purchaser represents that the purchaser is purchasing  
25 for the purchaser's own account, or a trust account if the purchaser  
26 is a trustee, and not with a view to or for sale in connection with  
27 any distribution of the stock.

28 For the purposes of this subdivision, all securities held by a  
29 husband and wife, whether or not jointly, shall be considered to  
30 be owned by one person, and all securities held by a corporation  
31 that has issued stock pursuant to this exemption shall be considered  
32 to be held by the shareholders to whom it has issued the stock.

33 All stock issued by a corporation pursuant to this subdivision as  
34 it existed prior to the effective date of the amendments to this  
35 section made during the 1996 portion of the 1995–96 Regular  
36 Session that required the issuer to have stamped or printed  
37 prominently on the face of the stock certificate a legend in a form  
38 prescribed by rule of the commissioner restricting transfer of the  
39 stock in a manner provided for by that rule shall not be subject to  
40 the transfer restriction legend requirement and, by operation of

1 law, the corporation is authorized to remove that transfer restriction  
2 legend from the certificates of those shares of stock issued by the  
3 corporation pursuant to this subdivision as it existed prior to the  
4 effective date of the amendments to this section made during the  
5 1996 portion of the 1995–96 Regular Session.

6 (i) Any offer or sale (1) to a bank, savings and loan association,  
7 trust company, insurance company, investment company registered  
8 under the Investment Company Act of 1940, pension or  
9 profit-sharing trust (other than a pension or profit-sharing trust of  
10 the issuer, a self-employed individual retirement plan, or individual  
11 retirement account), or other institutional investor or governmental  
12 agency or instrumentality that the commissioner may designate  
13 by rule, whether the purchaser is acting for itself or as trustee, or  
14 (2) to any corporation with outstanding securities registered under  
15 Section 12 of the Securities Exchange Act of 1934 or any wholly  
16 owned subsidiary of the corporation that after the offer and sale  
17 will own directly or indirectly 100 percent of the outstanding  
18 capital stock of the issuer, provided the purchaser represents that  
19 it is purchasing for its own account (or for the trust account) for  
20 investment and not with a view to or for sale in connection with  
21 any distribution of the security.

22 (j) Any offer or sale of any certificate of interest or participation  
23 in an oil or gas title or lease (including subsurface gas storage and  
24 payments out of production) if either of the following apply:

25 (1) All of the purchasers meet one of the following requirements:

26 (A) Are and have been during the preceding two years engaged  
27 primarily in the business of drilling for, producing, or refining oil  
28 or gas (or whose corporate predecessor, in the case of a corporation,  
29 has been so engaged).

30 (B) Are persons described in paragraph (1) of subdivision (i).

31 (C) Have been found by the commissioner upon written  
32 application to be substantially engaged in the business of drilling  
33 for, producing, or refining oil or gas so as not to require the  
34 protection provided by this law (which finding shall be effective  
35 until rescinded).

36 (2) The security is concurrently hypothecated to a bank in the  
37 ordinary course of business to secure a loan made by the bank,  
38 provided that each purchaser represents that it is purchasing for  
39 its own account for investment and not with a view to or for sale  
40 in connection with any distribution of the security.

1 (k) Any offer or sale of any security under, or pursuant to, a  
2 plan of reorganization under Chapter 11 of the federal bankruptcy  
3 law that has been confirmed or is subject to confirmation by the  
4 decree or order of a court of competent jurisdiction.

5 (l) Any offer or sale of an option, warrant, put, call, or straddle,  
6 and any guarantee of any of these securities, by a person who is  
7 not the issuer of the security subject to the right, if the transaction,  
8 had it involved an offer or sale of the security subject to the right  
9 by the person, would not have violated Section 25110 or 25130.

10 (m) Any offer or sale of a stock to a pension, profit-sharing,  
11 stock bonus, or employee stock ownership plan, provided that (1)  
12 the plan meets the requirements for qualification under Section  
13 401 of the Internal Revenue Code, and (2) the employees are not  
14 required or permitted individually to make any contributions to  
15 the plan. The exemption provided by this subdivision shall not be  
16 affected by whether the stock is contributed to the plan, purchased  
17 from the issuer with contributions by the issuer or an affiliate of  
18 the issuer, or purchased from the issuer with funds borrowed from  
19 the issuer, an affiliate of the issuer, or any other lender.

20 (n) Any offer or sale of any security in a transaction, other than  
21 an offer or sale of a security in a rollup transaction, that meets all  
22 of the following criteria:

23 (1) The issuer is (A) a California corporation or foreign  
24 corporation that, at the time of the filing of the notice required  
25 under this subdivision, is subject to Section 2115, or (B) any other  
26 form of business entity, including without limitation a partnership  
27 or trust organized under the laws of this state. The exemption  
28 provided by this subdivision is not available to a “blind pool”  
29 issuer, as that term is defined by the commissioner, or to an  
30 investment company subject to the Investment Company Act of  
31 1940.

32 (2) Sales of securities are made only to qualified purchasers or  
33 other persons the issuer reasonably believes, after reasonable  
34 inquiry, to be qualified purchasers. A corporation, partnership, or  
35 other organization specifically formed for the purpose of acquiring  
36 the securities offered by the issuer in reliance upon this exemption  
37 may be a qualified purchaser if each of the equity owners of the  
38 corporation, partnership, or other organization is a qualified  
39 purchaser. Qualified purchasers include the following:



1 (A) A person designated in Section 260.102.13 of Title 10 of  
2 the California Code of Regulations.

3 (B) A person designated in subdivision (i) or any rule of the  
4 commissioner adopted thereunder.

5 (C) A pension or profit-sharing trust of the issuer, a  
6 self-employed individual retirement plan, or an individual  
7 retirement account, if the investment decisions made on behalf of  
8 the trust, plan, or account are made solely by persons who are  
9 qualified purchasers.

10 (D) An organization described in Section 501(c)(3) of the  
11 Internal Revenue Code, corporation, Massachusetts or similar  
12 business trust, or partnership, each with total assets in excess of  
13 five million dollars (\$5,000,000) according to its most recent  
14 audited financial statements.

15 (E) With respect to the offer and sale of one class of voting  
16 common stock of an issuer or of preferred stock of an issuer  
17 entitling the holder thereof to at least the same voting rights as the  
18 issuer's one class of voting common stock, provided that the issuer  
19 has only one-class voting common stock outstanding upon  
20 consummation of the offer and sale, a natural person who, either  
21 individually or jointly with the person's spouse, (i) has a minimum  
22 net worth of two hundred fifty thousand dollars (\$250,000), and  
23 had, during the immediately preceding tax year, gross income in  
24 excess of one hundred thousand dollars (\$100,000) and reasonably  
25 expects gross income in excess of one hundred thousand dollars  
26 (\$100,000) during the current tax year or (ii) has a minimum net  
27 worth of five hundred thousand dollars (\$500,000). "Net worth"  
28 shall be determined exclusive of home, home furnishings, and  
29 automobiles. Other assets included in the computation of net worth  
30 may be valued at fair market value.

31 Each natural person specified above, by reason of his or her  
32 business or financial experience, or the business or financial  
33 experience of his or her professional adviser, who is unaffiliated  
34 with and who is not compensated, directly or indirectly, by the  
35 issuer or any affiliate or selling agent of the issuer, can be  
36 reasonably assumed to have the capacity to protect his or her  
37 interests in connection with the transaction. The amount of the  
38 investment of each natural person shall not exceed 10 percent of  
39 the net worth, as determined by this subparagraph, of that natural  
40 person.

1 (F) Any other purchaser designated as qualified by rule of the  
2 commissioner.

3 (3) Each purchaser represents that the purchaser is purchasing  
4 for the purchaser's own account (or trust account, if the purchaser  
5 is a trustee) and not with a view to or for sale in connection with  
6 a distribution of the security.

7 (4) Each natural person purchaser, including a corporation,  
8 partnership, or other organization specifically formed by natural  
9 persons for the purpose of acquiring the securities offered by the  
10 issuer, receives, at least five business days before securities are  
11 sold to, or a commitment to purchase is accepted from, the  
12 purchaser, a written offering disclosure statement that shall meet  
13 the disclosure requirements of Regulation D (17 C.F.R. 230.501  
14 et seq.), and any other information as may be prescribed by rule  
15 of the commissioner, provided that the issuer shall not be obligated  
16 pursuant to this paragraph to provide this disclosure statement to  
17 a natural person qualified under Section 260.102.13 of Title 10 of  
18 the California Code of Regulations. The offer or sale of securities  
19 pursuant to a disclosure statement required by this paragraph that  
20 is in violation of Section 25401, or that fails to meet the disclosure  
21 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall  
22 not render unavailable to the issuer the claim of an exemption from  
23 Section 25110 afforded by this subdivision. This paragraph does  
24 not impose, directly or indirectly, any additional disclosure  
25 obligation with respect to any other exemption from qualification  
26 available under any other provision of this section.

27 (5) (A) A general announcement of proposed offering may be  
28 published by written document only, provided that the general  
29 announcement of proposed offering sets forth the following  
30 required information:

31 (i) The name of the issuer of the securities.

32 (ii) The full title of the security to be issued.

33 (iii) The anticipated suitability standards for prospective  
34 purchasers.

35 (iv) A statement that (I) no money or other consideration is  
36 being solicited or will be accepted, (II) an indication of interest  
37 made by a prospective purchaser involves no obligation or  
38 commitment of any kind, and, if the issuer is required by paragraph  
39 (4) to deliver a disclosure statement to prospective purchasers,  
40 (III) no sales will be made or commitment to purchase accepted

1 until five business days after delivery of a disclosure statement  
2 and subscription information to the prospective purchaser in  
3 accordance with the requirements of this subdivision.

4 (v) Any other information required by rule of the commissioner.

5 (vi) The following legend: "For more complete information  
6 about (Name of Issuer) and (Full Title of Security), send for  
7 additional information from (Name and Address) by sending this  
8 coupon or calling (Telephone Number)."

9 (B) The general announcement of proposed offering referred  
10 to in subparagraph (A) may also set forth the following  
11 information:

12 (i) A brief description of the business of the issuer.

13 (ii) The geographic location of the issuer and its business.

14 (iii) The price of the security to be issued, or, if the price is not  
15 known, the method of its determination or the probable price range  
16 as specified by the issuer, and the aggregate offering price.

17 (C) The general announcement of proposed offering shall  
18 contain only the information that is set forth in this paragraph.

19 (D) Dissemination of the general announcement of proposed  
20 offering to persons who are not qualified purchasers, without more,  
21 shall not disqualify the issuer from claiming the exemption under  
22 this subdivision.

23 (6) No telephone solicitation shall be permitted until the issuer  
24 has determined that the prospective purchaser to be solicited is a  
25 qualified purchaser.

26 (7) The issuer files a notice of transaction under this subdivision  
27 both (A) concurrent with the publication of a general announcement  
28 of proposed offering or at the time of the initial offer of the  
29 securities, whichever occurs first, accompanied by a filing fee, and  
30 (B) within 10 business days following the close or abandonment  
31 of the offering, but in no case more than 210 days from the date  
32 of filing the first notice. The first notice of transaction under  
33 subparagraph (A) shall contain an undertaking, in a form acceptable  
34 to the commissioner, to deliver any disclosure statement required  
35 by paragraph (4) to be delivered to prospective purchasers, and  
36 any supplement thereto, to the commissioner within 10 days of  
37 the commissioner's request for the information. The exemption  
38 from qualification afforded by this subdivision is unavailable if  
39 an issuer fails to file the first notice required under subparagraph  
40 (A) or to pay the filing fee. The commissioner has the authority

1 to assess an administrative penalty of up to one thousand dollars  
2 (\$1,000) against an issuer that fails to deliver the disclosure  
3 statement required to be delivered to the commissioner upon the  
4 commissioner's request within the time period set forth above.  
5 Neither the filing of the disclosure statement nor the failure by the  
6 commissioner to comment thereon precludes the commissioner  
7 from taking any action deemed necessary or appropriate under this  
8 division with respect to the offer and sale of the securities.

9 (o) An offer or sale of any security issued by a corporation or  
10 limited liability company pursuant to a purchase plan or agreement,  
11 or issued pursuant to an option plan or agreement, where the  
12 security at the time of issuance or grant is exempt from registration  
13 under the Securities Act of 1933, as amended, pursuant to Rule  
14 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions  
15 of which are hereby incorporated by reference into this section,  
16 provided that (1) the terms of any purchase plan or agreement shall  
17 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of  
18 Title 10 of the California Code of Regulations, (2) the terms of  
19 any option plan or agreement shall comply with Sections  
20 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the  
21 California Code of Regulations, and (3) the issuer files a notice of  
22 transaction in accordance with rules adopted by the commissioner  
23 no later than 30 days after the initial issuance of any security under  
24 that plan, accompanied by a filing fee as prescribed by subdivision  
25 (y) of Section 25608. The failure to file the notice of transaction  
26 within the time specified in this subdivision shall not affect the  
27 availability of this exemption. An issuer that fails to file the notice  
28 shall, within 15 business days after discovery of the failure to file  
29 the notice or after demand by the commissioner, whichever occurs  
30 first, file the notice and pay the commissioner a fee equal to the  
31 maximum aggregate fee payable had the transaction been qualified  
32 under Section 25110.

33 Offers and sales exempt pursuant to this subdivision shall be  
34 deemed to be part of a single, discrete offering and are not subject  
35 to integration with any other offering or sale, whether qualified  
36 under Chapter 2 (commencing with Section 25110), or otherwise  
37 exempt, or not subject to qualification.

38 (p) An offer or sale of nonredeemable securities to accredited  
39 investors (Section 28031) by a person licensed under the Capital  
40 Access Company Law (Division 3 (commencing with Section

28000) of Title 4), provided that all purchasers either (1) have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors, controlling persons, or managers (as appointed or elected by the members), or (2) by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction. All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer of the securities in the manner as the rule or order provides. The exemption under this subdivision shall not be available for any offering that is exempt or asserted to be exempt pursuant to Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11)) or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is conducted by means of any form of general solicitation or general advertising.

(q) Any offer or sale of any viatical or life settlement contract or fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(1) Sales of securities described in this subdivision are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser only if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.

(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

(C) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of

1 the trust, plan, or account are made solely by persons who are  
2 qualified purchasers.

3 (D) An organization described in Section 501(c)(3) of the  
4 Internal Revenue Code, corporation, Massachusetts or similar  
5 business trust, or partnership, each with total assets in excess of  
6 five million dollars (\$5,000,000) according to its most recent  
7 audited financial statements.

8 (E) A natural person who, either individually or jointly with the  
9 person's spouse, (i) has a minimum net worth of one hundred fifty  
10 thousand dollars (\$150,000) and had, during the immediately  
11 preceding tax year, gross income in excess of one hundred thousand  
12 dollars (\$100,000) and reasonably expects gross income in excess  
13 of one hundred thousand dollars (\$100,000) during the current tax  
14 year or (ii) has a minimum net worth of two hundred fifty thousand  
15 dollars (\$250,000). "Net worth" shall be determined exclusive of  
16 home, home furnishings, and automobiles. Other assets included  
17 in the computation of net worth may be valued at fair market value.

18 Each natural person specified above, by reason of his or her  
19 business or financial experience, or the business or financial  
20 experience of his or her professional adviser, who is unaffiliated  
21 with and who is not compensated, directly or indirectly, by the  
22 issuer or any affiliate or selling agent of the issuer, can be  
23 reasonably assumed to have the capacity to protect his or her  
24 interests in connection with the transaction.

25 The amount of the investment of each natural person shall not  
26 exceed 10 percent of the net worth, as determined by this  
27 subdivision, of that natural person.

28 (F) Any other purchaser designated as qualified by rule of the  
29 commissioner.

30 (2) Each purchaser represents that the purchaser is purchasing  
31 for the purchaser's own account (or trust account, if the purchaser  
32 is a trustee) and not with a view to or for sale in connection with  
33 a distribution of the security.

34 (3) Each natural person purchaser, including a corporation,  
35 partnership, or other organization specifically formed by natural  
36 persons for the purpose of acquiring the securities offered by the  
37 issuer, receives, at least five business days before securities  
38 described in this subdivision are sold to, or a commitment to  
39 purchase is accepted from, the purchaser, the following information  
40 in writing:

1 (A) The name, principal business and mailing address, and  
2 telephone number of the issuer.

3 (B) The suitability standards for prospective purchasers as set  
4 forth in paragraph (1) of this subdivision.

5 (C) A description of the issuer's type of business organization  
6 and the state in which the issuer is organized or incorporated.

7 (D) A brief description of the business of the issuer.

8 (E) If the issuer retains ownership or becomes the beneficiary  
9 of the insurance policy, an audit report of an independent certified  
10 public accountant together with a balance sheet and related  
11 statements of income, retained earnings, and cashflows that reflect  
12 the issuer's financial position, the results of the issuer's operations,  
13 and the issuer's cashflows as of a date within 15 months before  
14 the date of the initial issuance of the securities described in this  
15 subdivision. The financial statements listed in this subparagraph  
16 shall be prepared in conformity with generally accepted accounting  
17 principles. If the date of the audit report is more than 120 days  
18 before the date of the initial issuance of the securities described  
19 in this subdivision, the issuer shall provide unaudited interim  
20 financial statements.

21 (F) The names of all directors, officers, partners, members, or  
22 trustees of the issuer.

23 (G) A description of any order, judgment, or decree that is final  
24 as to the issuing entity of any state, federal, or foreign country  
25 governmental agency or administrator, or of any state, federal, or  
26 foreign country court of competent jurisdiction (i) revoking,  
27 suspending, denying, or censuring for cause any license, permit,  
28 or other authority of the issuer or of any director, officer, partner,  
29 member, trustee, or person owning or controlling, directly or  
30 indirectly, 10 percent or more of the outstanding interest or equity  
31 securities of the issuer, to engage in the securities, commodities,  
32 franchise, insurance, real estate, or lending business or in the offer  
33 or sale of securities, commodities, franchises, insurance, real estate,  
34 or loans; (ii) permanently restraining, enjoining, barring,  
35 suspending, or censuring any such person from engaging in or  
36 continuing any conduct, practice, or employment in connection  
37 with the offer or sale of securities, commodities, franchises,  
38 insurance, real estate, or loans; (iii) convicting any such person  
39 of, or pleading nolo contendere by any such person to, any felony  
40 or misdemeanor involving a security, commodity, franchise,

1 insurance, real estate, or loan, or any aspect of the securities,  
2 commodities, franchise, insurance, real estate, or lending business,  
3 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
4 conversion, or misappropriation of property; or (iv) holding any  
5 such person liable in a civil action involving breach of a fiduciary  
6 duty, fraud, deceit, embezzlement, fraudulent conversion, or  
7 misappropriation of property. This subparagraph does not apply  
8 to any order, judgment, or decree that has been vacated, overturned,  
9 or is more than 10 years old.

10 (H) Notice of the purchaser's right to rescind or cancel the  
11 investment and receive a refund pursuant to Section 25508.5.

12 (I) The name, address, and telephone number of the issuing  
13 insurance company, and the name, address, and telephone number  
14 of the state or foreign country regulator of the insurance company.

15 (J) The total face value of the insurance policy and the  
16 percentage of the insurance policy the purchaser will own.

17 (K) The insurance policy number, issue date, and type.

18 (L) If a group insurance policy, the name, address, and telephone  
19 number of the group, and, if applicable, the material terms and  
20 conditions of converting the policy to an individual policy,  
21 including the amount of increased premiums.

22 (M) If a term insurance policy, the term and the name, address,  
23 and telephone number of the person who will be responsible for  
24 renewing the policy if necessary.

25 (N) That the insurance policy is beyond the state statute for  
26 contestability and the reason therefor.

27 (O) The insurance policy premiums and terms of premium  
28 payments.

29 (P) The amount of the purchaser's moneys that will be set aside  
30 to pay premiums.

31 (Q) The name, address, and telephone number of the person  
32 who will be the insurance policy owner and the person who will  
33 be responsible for paying premiums.

34 (R) The date on which the purchaser will be required to pay  
35 premiums and the amount of the premium, if known.

36 (S) A statement to the effect that any projected rate of return to  
37 the purchaser from the purchase of a viatical or life settlement  
38 contract or a fractionalized or pooled interest therein is based on  
39 an estimated life expectancy for the person insured under the life  
40 insurance policy; that the return on the purchase may vary



1 substantially from the expected rate of return based upon the actual  
2 life expectancy of the insured that may be less than, equal to, or  
3 may greatly exceed the estimated life expectancy; and that the rate  
4 of return would be higher if the actual life expectancy were less  
5 than, and lower if the actual life expectancy were greater than, the  
6 estimated life expectancy of the insured at the time the viatical or  
7 life settlement contract was closed.

8 (T) A statement that the purchaser should consult with his or  
9 her tax adviser regarding the tax consequences of the purchase of  
10 the viatical or life settlement contract or fractionalized or pooled  
11 interest therein and, if the purchaser is using retirement funds or  
12 accounts for that purchase, whether or not any adverse tax  
13 consequences might result from the use of those funds for the  
14 purchase of that investment.

15 (U) Any other information as may be prescribed by rule of the  
16 commissioner.

17 (r) (1) (A) Any offer of a security by an issuer using any form  
18 of general solicitation or general advertising as specified in Rule  
19 502(c) of Regulation D under the Securities Act of 1933 (17 C.F.R.  
20 230.502(c)), except as provided in subparagraph (B).

21 (B) Any offer of a security made by means of an unsolicited  
22 telephone call to a person's residence or cellular telephone, unless  
23 the issuer and the caller take reasonable steps, prior to the  
24 unsolicited telephone call, to verify that the person is an accredited  
25 investor, as defined in Rule 501 of Regulation D promulgated  
26 under the Securities Act of 1933, as amended (17 C.F.R. 230.501),  
27 and the transaction meets all the requirements of this subdivision.

28 (2) The aggregate offering price for an offering of securities  
29 under this subdivision, as defined in Rule 501(c) of Regulation D  
30 under the Securities Act of 1933 (17 C.F.R. 230.501(c)), shall not  
31 exceed one million dollars (\$1,000,000), less the aggregate offering  
32 price for all securities sold within 12 months before the start of  
33 and during the offering of securities pursuant to the exemption  
34 under this subdivision.

35 (3) (A) Prior to selling any security to a person solicited  
36 pursuant to this subdivision, an issuer shall obtain from that person  
37 a completed offeree questionnaire in a form adopted by the  
38 commissioner.

1 (B) An issuer shall not solely rely on the questionnaire in making  
2 the determination of whether the person is an accredited investor  
3 and the offering is suitable to that person.

4 (C) The issuer shall maintain the confidentiality of any and all  
5 information in the questionnaire and not otherwise sell, distribute,  
6 or use the information in that questionnaire for any purpose other  
7 than to assist in establishing the suitability of that investor for that  
8 particular offering. A violation of this paragraph shall result in  
9 disqualification of the offering and from the future use of this  
10 exemption under this subdivision by the issuer.

11 (4) Sales of securities shall be made only to a person who is, or  
12 with respect to whom the issuer has taken reasonable steps to verify  
13 is, an accredited investor immediately prior to the sale.

14 (5) The issuer has taken reasonable steps to verify that,  
15 immediately prior to the sale, the offering is suitable for the person,  
16 based on the person's financial status, objectives, investment  
17 experience, time horizon, risk tolerance, and any other information  
18 the issuer deems relevant to determine whether the offering is  
19 suitable to the person. The issuer shall maintain, for a period of  
20 four years, documentation sufficient to establish the basis for its  
21 determination of suitability.

22 (6) (A) The issuer shall provide to the person, in writing, at a  
23 minimum, the following: (i) information detailing its business, its  
24 properties, its competition, the identity of its officers and directors  
25 and their compensation, material transactions between the company  
26 and its officers and directors, material legal proceedings involving  
27 the company or its officers and directors, the plan for distributing  
28 the securities, and the intended use of the proceeds of the offering;  
29 (ii) disclosures of all risk factors associated with the offering,  
30 including, but not limited to, lack of business operating history,  
31 adverse economic conditions in a particular industry, lack of a  
32 market for the securities offered, and dependence upon key  
33 personnel, and (iii) a statement detailing the financial condition  
34 of the issuer and supporting documentation.

35 (B) Upon providing this information to the investor, there shall  
36 be a mandatory 24-hour waiting period before a sale may be made  
37 and the investor shall have the right to void the contract within the  
38 first 72 hours of the sale.

39 (7) If the person is a natural person, the amount of consideration  
40 paid by the purchaser does not exceed 5 percent of his or her net

1 worth, or joint net worth with the purchaser's spouse or domestic  
2 partner, immediately prior to the investment, and each investor's  
3 investment in the offering, together with all previous offerings  
4 under this subdivision made during the previous 12 months, does  
5 not exceed 5 percent of his or her net worth. "Net worth" shall be  
6 determined as specified in Rule 501(a) of Regulation D  
7 promulgated by the Securities and Exchange Commission under  
8 the Securities Act of 1933, as amended (17 C.F.R. 230.501(a)).

9 (8) The issuer can reasonably assume that the person has the  
10 capacity to protect his or her interests in connection with the  
11 offering due to his or her business or financial experience, or the  
12 business or financial experience of his or her professional adviser,  
13 who is unaffiliated with and not compensated, directly or indirectly,  
14 by the issuer or any affiliate or selling agent of the issuer.

15 (9) The issuer believes in good faith that the offer and sale are  
16 exempt from registration under Section 5 of the Securities Act of  
17 1933 (15 U.S.C. Sec. 77e) pursuant to Section 3(a)(11) of the act  
18 (15 U.S.C. Sec. 77c(a)(11)), or the rules and regulations adopted  
19 by the Securities and Exchange Commission under Section 3(b)  
20 or Section 4(2) of the act (15 U.S.C. Sec. 77d(2)).

21 (10) The issuer specifies in all advertisements, communications,  
22 sales literature, or other information that is publicly disseminated  
23 in connection with the offering, including by means of electronic  
24 transmission or broadcast media, that the securities will be sold to  
25 accredited investors only, and the offering is exempt from the  
26 qualification requirements of Section 25110 under the exemption  
27 provided for in this subdivision.

28 (11) The issuer places a legend on the cover page of each  
29 disclosure document proposed to be used in connection with the  
30 offering or on the cover page of the subscription agreement  
31 advising that the securities described in the disclosure document  
32 or subscription agreement will be sold to accredited investors only,  
33 and the offering is exempted from the qualification requirements  
34 of Section 25110 under the exemption provided for in this  
35 subdivision.

36 (12) Dissemination of information regarding the proposed  
37 offering to a person who is not an accredited investor shall not  
38 disqualify the offering from the exemption under this subdivision.

39 (13) An issuer shall maintain a copy of any advertisement or  
40 solicitation, and any other offering material, for four years.

1 (14) The issuer shall file with the commissioner a notice  
2 pursuant to Section 25102.1 and pay the fee specified in  
3 subdivision (c) of Section 25608.1 within 15 days after the first  
4 sale of the securities in this state. Upon filing of this notice, the  
5 issuer shall also pay a five-dollar (\$5) fee to be deposited in the  
6 Victims of Corporate Fraud Compensation Fund.

7 (15) (A) A person who purchases securities in an offering that  
8 fails to meet all the terms and conditions of this subdivision may  
9 bring an action under Sections 25503, 25504, and 25504.1 for  
10 rescission of the purchase and any other remedy provided in those  
11 sections.

12 (B) Any purchaser of a security pursuant to this subdivision  
13 may bring an action against anyone who employs, directly or  
14 indirectly, any device, scheme, or other artifice to defraud in  
15 connection with the offer, purchase, or sale of any security issued  
16 under this subdivision.

17 (C) A person who purchases securities in an offering under this  
18 subdivision that fails to meet all the terms and conditions of this  
19 subdivision may also bring an action to seek any other remedies  
20 available at law.

21 (D) In any action by a purchaser under this subdivision, the  
22 issuer shall have the burden of proof to demonstrate that the  
23 requirements of the exemption under this subdivision were met.

24 (E) The court shall award attorney's fees and costs to a  
25 prevailing purchaser in any such action and may award treble or  
26 punitive damages.

27 (16) The exemption is not available for an offering by an issuer  
28 who is (A) an investment company as defined in Section 3(a)(1)  
29 of the Investment Company Act of 1940 (15 U.S.C. Sec. 80a et  
30 seq.), or (B) a development stage company as referred to in Rule  
31 504(a)(3) under the Securities Act of 1933.

32 (17) The exemption under this subdivision is not available to  
33 an issuer if any of the following apply to the issuer or its  
34 predecessors, affiliates, directors, officers, general partners,  
35 beneficial owners of 10 percent or more of any classification of  
36 its equity securities, promoters presently connected with the issuer  
37 in any capacity, or any underwriter of the securities to be offered,  
38 or any of the underwriter's partners, directors, or officers:

39 (A) Within the 10 years immediately prior to the first offer of  
40 the security, the person has filed a registration statement that is

1 the subject of a currently effective stop order entered by any state  
2 securities administrator or the Securities and Exchange  
3 Commission.

4 (B) The person has been convicted of any criminal offense  
5 involving fraud, deceit, or any offense concerning the offer,  
6 purchase, or sale of any security, or is subject to any order,  
7 judgment, or decree of any court of competent jurisdiction  
8 involving the commission of elder or dependent adult financial  
9 abuse.

10 (C) The person is currently subject to a state or federal  
11 administrative enforcement order or judgment entered within the  
12 10 years immediately prior to the first offer of the security finding  
13 fraud or deceit in connection with the purchase or sale of any  
14 security.

15 (D) The person is currently subject to any order, judgment, or  
16 decree of any court of competent jurisdiction, entered within the  
17 10 years immediately prior to the first offer of the security,  
18 temporarily, preliminarily, or permanently restraining or enjoining  
19 the person from engaging in or continuing to engage in any conduct  
20 or practice involving fraud or deceit in connection with the  
21 purchase or sale of any security, except if any of the following  
22 apply:

23 (i) The person is licensed or registered to conduct  
24 securities-related business in the state in which the order, judgment,  
25 or decree described in subparagraph (A), (B), (C), or (D) was  
26 entered against the person.

27 (ii) Before the first offer of securities is made in reliance upon  
28 the exemption under this subdivision, the state securities  
29 administrator, the court, or the regulatory authority that entered  
30 the order, judgment, or decree removes, reverses, or vacates the  
31 order, judgment, or decree.

32 (iii) The issuer, exercising reasonable care and based on a factual  
33 inquiry, establishes that it could not have known of the existence  
34 of circumstances described in subparagraph (A), (B), (C), or (D).

35 ~~(18)~~

36 (s) This section shall remain in effect only until January 1, 2016,  
37 and as of that date is repealed, unless a later enacted statute, that  
38 is enacted before January 1, 2016, deletes or extends that date.

39 *SEC. 1.5. Section 25102 of the Corporations Code is amended*  
40 *to read:*

1     25102. The following transactions are exempted from the  
2 provisions of Section 25110:

3     (a) Any offer (but not a sale) not involving any public offering  
4 and the execution and delivery of any agreement for the sale of  
5 securities pursuant to the offer if (1) the agreement contains  
6 substantially the following provision: “The sale of the securities  
7 that are the subject of this agreement has not been qualified with  
8 the Commissioner of Corporations of the State of California and  
9 the issuance of the securities or the payment or receipt of any part  
10 of the consideration therefor prior to the qualification is unlawful,  
11 unless the sale of securities is exempt from the qualification by  
12 Section 25100, 25102, or 25105 of the California Corporations  
13 Code. The rights of all parties to this agreement are expressly  
14 conditioned upon the qualification being obtained, unless the sale  
15 is so exempt”; and (2) no part of the purchase price is paid or  
16 received and none of the securities are issued until the sale of the  
17 securities is qualified under this law unless the sale of securities  
18 is exempt from the qualification by this section, Section 25100,  
19 or 25105.

20     (b) Any offer (but not a sale) of a security for which a  
21 registration statement has been filed under the Securities Act of  
22 1933 but has not yet become effective, or for which an offering  
23 statement under Regulation A has been filed but has not yet been  
24 qualified, if no stop order or refusal order is in effect and no public  
25 proceeding or examination looking ~~towards~~ *toward* an order is  
26 pending under Section 8 of the act and no order under Section  
27 25140 or subdivision (a) of Section 25143 is in effect under this  
28 law.

29     (c) Any offer (but not a sale) and the execution and delivery of  
30 any agreement for the sale of securities pursuant to the offer as  
31 may be permitted by the commissioner upon application. Any  
32 negotiating permit under this subdivision shall be conditioned to  
33 the effect that none of the securities may be issued and none of  
34 the consideration therefor may be received or accepted until the  
35 sale of the securities is qualified under this law.

36     (d) Any transaction or agreement between the issuer and an  
37 underwriter or among underwriters if the sale of the securities is  
38 qualified, or exempt from qualification, at the time of distribution  
39 thereof in this state, if any.

1 (e) Any offer or sale of any evidence of indebtedness, whether  
2 secured or unsecured, and any guarantee thereof, in a transaction  
3 not involving any public offering.

4 (f) Any offer or sale of any security in a transaction (other than  
5 an offer or sale to a pension or profit-sharing trust of the issuer)  
6 that meets each of the following criteria:

7 (1) Sales of the security are not made to more than 35 persons,  
8 including persons not in this state.

9 (2) All purchasers either have a preexisting personal or business  
10 relationship with the offeror or any of its partners, officers,  
11 directors or controlling persons, or managers (as appointed or  
12 elected by the members) if the offeror is a limited liability  
13 company, or by reason of their business or financial experience or  
14 the business or financial experience of their professional advisers  
15 who are unaffiliated with and who are not compensated by the  
16 issuer or any affiliate or selling agent of the issuer, directly or  
17 indirectly, could be reasonably assumed to have the capacity to  
18 protect their own interests in connection with the transaction.

19 (3) Each purchaser represents that the purchaser is purchasing  
20 for the purchaser's own account (or a trust account if the purchaser  
21 is a trustee) and not with a view to or for sale in connection with  
22 any distribution of the security.

23 (4) The offer and sale of the security is not accomplished by  
24 the publication of any advertisement. The number of purchasers  
25 referred to above is exclusive of any described in subdivision (i),  
26 any officer, director, or affiliate of the issuer, or manager (as  
27 appointed or elected by the members) if the issuer is a limited  
28 liability company, and any other purchaser who the commissioner  
29 designates by rule. For purposes of this section, a husband and  
30 wife (together with any custodian or trustee acting for the account  
31 of their minor children) are counted as one person and a  
32 partnership, corporation, or other organization that was not  
33 specifically formed for the purpose of purchasing the security  
34 offered in reliance upon this exemption, is counted as one person.  
35 The commissioner ~~may~~ *shall* by rule require the issuer to file a  
36 notice of transactions under this subdivision.

37 The failure to file the notice or the failure to file the notice within  
38 the time specified by the rule of the commissioner shall not affect  
39 the availability of ~~this~~ *the* exemption. ~~An Any issuer who that~~ fails  
40 to file the notice as provided by rule of the commissioner shall,

1 within 15 business days after discovery of the failure to file the  
2 notice or after demand by the commissioner, whichever occurs  
3 first, file the notice and pay to the commissioner a fee equal to the  
4 fee payable had the transaction been qualified under Section 25110.  
5 *Neither the filing of the notice nor the failure by the commissioner*  
6 *to comment thereon precludes the commissioner from taking any*  
7 *action that the commissioner deems necessary or appropriate*  
8 *under this division with respect to the offer and sale of the*  
9 *securities.*

10 (g) Any offer or sale of conditional sale agreements, equipment  
11 trust certificates, or certificates of interest or participation therein  
12 or partial assignments thereof, covering the purchase of railroad  
13 rolling stock or equipment or the purchase of motor vehicles,  
14 aircraft, or parts thereof, in a transaction not involving any public  
15 offering.

16 (h) Any offer or sale of voting common stock by a corporation  
17 incorporated in any state if, immediately after the proposed sale  
18 and issuance, there will be only one class of stock of the  
19 corporation outstanding that is owned beneficially by no more than  
20 35 persons, provided all of the following requirements have been  
21 met:

22 (1) The offer and sale of the stock is not accompanied by the  
23 publication of any advertisement, and no selling expenses have  
24 been given, paid, or incurred in connection therewith.

25 (2) The consideration to be received by the issuer for the stock  
26 to be issued consists of any of the following:

27 (A) Only assets (which may include cash) of an existing business  
28 enterprise transferred to the issuer upon its initial organization, of  
29 which all of the persons who are to receive the stock to be issued  
30 pursuant to this exemption were owners during, and the enterprise  
31 was operated for, a period of not less than one year immediately  
32 preceding the proposed issuance, and the ownership of the  
33 enterprise immediately prior to the proposed issuance was in the  
34 same proportions as the shares of stock are to be issued.

35 (B) Only cash or cancellation of indebtedness for money  
36 borrowed, or both, upon the initial organization of the issuer,  
37 provided all of the stock is issued for the same price per share.

38 (C) Only cash, provided the sale is approved in writing by each  
39 of the existing shareholders and the purchaser or purchasers are  
40 existing shareholders.



1 (D) In a case where after the proposed issuance there will be  
2 only one owner of the stock of the issuer, only any legal  
3 consideration.

4 (3) No promotional consideration has been given, paid, or  
5 incurred in connection with the issuance. Promotional consideration  
6 means any consideration paid directly or indirectly to a person  
7 who, acting alone or in conjunction with one or more other persons,  
8 takes the initiative in founding and organizing the business or  
9 enterprise of an issuer for services rendered in connection with the  
10 founding or organizing.

11 (4) A notice in a form prescribed by rule of the commissioner,  
12 signed by an active member of the State Bar of California, is filed  
13 with or mailed for filing to the commissioner not later than 10  
14 business days after receipt of consideration for the securities by  
15 the issuer. That notice shall contain an opinion of the member of  
16 the State Bar of California that the exemption provided by this  
17 subdivision is available for the offer and sale of the securities. The  
18 failure to file the notice as required by this subdivision and the  
19 rules of the commissioner shall not affect the availability of this  
20 exemption. An issuer who fails to file the notice within the time  
21 specified by this subdivision shall, within 15 business days after  
22 discovery of the failure to file the notice or after demand by the  
23 commissioner, whichever occurs first, file the notice and pay to  
24 the commissioner a fee equal to the fee payable had the transaction  
25 been qualified under Section 25110. The notice, except when filed  
26 on behalf of a California corporation, shall be accompanied by an  
27 irrevocable consent, in the form that the commissioner by rule  
28 prescribes, appointing the commissioner or his or her successor in  
29 office to be the issuer's attorney to receive service of any lawful  
30 process in any noncriminal suit, action, or proceeding against it  
31 or its successor that arises under this law or any rule or order  
32 hereunder after the consent has been filed, with the same force and  
33 validity as if served personally on the issuer. An issuer on whose  
34 behalf a consent has been filed in connection with a previous  
35 qualification or exemption from qualification under this law (or  
36 application for a permit under any prior law if the application or  
37 notice under this law states that the consent is still effective) need  
38 not file another. Service may be made by leaving a copy of the  
39 process in the office of the commissioner, but it is not effective  
40 unless (A) the plaintiff, who may be the commissioner in a suit,

1 action, or proceeding instituted by him or her, forthwith sends  
2 notice of the service and a copy of the process by registered or  
3 certified mail to the defendant or respondent at its last address on  
4 file with the commissioner, and (B) the plaintiff's affidavit of  
5 compliance with this section is filed in the case on or before the  
6 return day of the process, if any, or within the further time as the  
7 court allows.

8 (5) Each purchaser represents that the purchaser is purchasing  
9 for the purchaser's own account, or a trust account if the purchaser  
10 is a trustee, and not with a view to or for sale in connection with  
11 any distribution of the stock.

12 For the purposes of this subdivision, all securities held by a  
13 husband and wife, whether or not jointly, shall be considered to  
14 be owned by one person, and all securities held by a corporation  
15 that has issued stock pursuant to this exemption shall be considered  
16 to be held by the shareholders to whom it has issued the stock.

17 All stock issued by a corporation pursuant to this subdivision as  
18 it existed prior to the effective date of the amendments to this  
19 section made during the 1996 portion of the 1995–96 Regular  
20 Session that required the issuer to have stamped or printed  
21 prominently on the face of the stock certificate a legend in a form  
22 prescribed by rule of the commissioner restricting transfer of the  
23 stock in a manner provided for by that rule shall not be subject to  
24 the transfer restriction legend requirement and, by operation of  
25 law, the corporation is authorized to remove that transfer restriction  
26 legend from the certificates of those shares of stock issued by the  
27 corporation pursuant to this subdivision as it existed prior to the  
28 effective date of the amendments to this section made during the  
29 1996 portion of the 1995–96 Regular Session.

30 (i) Any offer or sale (1) to a bank, savings and loan association,  
31 trust company, insurance company, investment company registered  
32 under the Investment Company Act of 1940, pension or  
33 profit-sharing trust (other than a pension or profit-sharing trust of  
34 the issuer, a self-employed individual retirement plan, or individual  
35 retirement account), or other institutional investor or governmental  
36 agency or instrumentality that the commissioner may designate  
37 by rule, whether the purchaser is acting for itself or as trustee, or  
38 (2) to any corporation with outstanding securities registered under  
39 Section 12 of the Securities Exchange Act of 1934 or any wholly  
40 owned subsidiary of the corporation that after the offer and sale

1 will own directly or indirectly 100 percent of the outstanding  
2 capital stock of the issuer, provided the purchaser represents that  
3 it is purchasing for its own account (or for the trust account) for  
4 investment and not with a view to or for sale in connection with  
5 any distribution of the security.

6 (j) Any offer or sale of any certificate of interest or participation  
7 in an oil or gas title or lease (including subsurface gas storage and  
8 payments out of production) if either of the following apply:

9 (1) All of the purchasers meet one of the following requirements:

10 (A) Are and have been during the preceding two years engaged  
11 primarily in the business of drilling for, producing, or refining oil  
12 or gas (or whose corporate predecessor, in the case of a corporation,  
13 has been so engaged).

14 (B) Are persons described in paragraph (1) of subdivision (i).

15 (C) Have been found by the commissioner upon written  
16 application to be substantially engaged in the business of drilling  
17 for, producing, or refining oil or gas so as not to require the  
18 protection provided by this law (which finding shall be effective  
19 until rescinded).

20 (2) The security is concurrently hypothecated to a bank in the  
21 ordinary course of business to secure a loan made by the bank,  
22 provided that each purchaser represents that it is purchasing for  
23 its own account for investment and not with a view to or for sale  
24 in connection with any distribution of the security.

25 (k) Any offer or sale of any security under, or pursuant to, a  
26 plan of reorganization under Chapter 11 of the federal bankruptcy  
27 law that has been confirmed or is subject to confirmation by the  
28 decree or order of a court of competent jurisdiction.

29 (l) Any offer or sale of an option, warrant, put, call, or straddle,  
30 and any guarantee of any of these securities, by a person who is  
31 not the issuer of the security subject to the right, if the transaction,  
32 had it involved an offer or sale of the security subject to the right  
33 by the person, would not have violated Section 25110 or 25130.

34 (m) Any offer or sale of a stock to a pension, profit-sharing,  
35 stock bonus, or employee stock ownership plan, provided that (1)  
36 the plan meets the requirements for qualification under Section  
37 401 of the Internal Revenue Code, and (2) the employees are not  
38 required or permitted individually to make any contributions to  
39 the plan. The exemption provided by this subdivision shall not be  
40 affected by whether the stock is contributed to the plan, purchased

1 from the issuer with contributions by the issuer or an affiliate of  
2 the issuer, or purchased from the issuer with funds borrowed from  
3 the issuer, an affiliate of the issuer, or any other lender.

4 (n) Any offer or sale of any security in a transaction, other than  
5 an offer or sale of a security in a rollup transaction, that meets all  
6 of the following criteria:

7 (1) The issuer is (A) a California corporation or foreign  
8 corporation that, at the time of the filing of the notice required  
9 under this subdivision, is subject to Section 2115, or (B) any other  
10 form of business entity, including without limitation a partnership  
11 or trust organized under the laws of this state. The exemption  
12 provided by this subdivision is not available to a “blind pool”  
13 issuer, as that term is defined by the commissioner, or to an  
14 investment company subject to the Investment Company Act of  
15 1940.

16 (2) Sales of securities are made only to qualified purchasers or  
17 other persons the issuer reasonably believes, after reasonable  
18 inquiry, to be qualified purchasers. A corporation, partnership, or  
19 other organization specifically formed for the purpose of acquiring  
20 the securities offered by the issuer in reliance upon this exemption  
21 may be a qualified purchaser if each of the equity owners of the  
22 corporation, partnership, or other organization is a qualified  
23 purchaser. Qualified purchasers include the following:

24 (A) A person designated in Section 260.102.13 of Title 10 of  
25 the California Code of Regulations.

26 (B) A person designated in subdivision (i) or any rule of the  
27 commissioner adopted thereunder.

28 (C) A pension or profit-sharing trust of the issuer, a  
29 self-employed individual retirement plan, or an individual  
30 retirement account, if the investment decisions made on behalf of  
31 the trust, plan, or account are made solely by persons who are  
32 qualified purchasers.

33 (D) An organization described in Section 501(c)(3) of the  
34 Internal Revenue Code, corporation, Massachusetts or similar  
35 business trust, or partnership, each with total assets in excess of  
36 five million dollars (\$5,000,000) according to its most recent  
37 audited financial statements.

38 (E) With respect to the offer and sale of one class of voting  
39 common stock of an issuer or of preferred stock of an issuer  
40 entitling the holder thereof to at least the same voting rights as the

1 issuer's one class of voting common stock, provided that the issuer  
2 has only one-class voting common stock outstanding upon  
3 consummation of the offer and sale, a natural person who, either  
4 individually or jointly with the person's spouse, (i) has a minimum  
5 net worth of two hundred fifty thousand dollars (\$250,000), and  
6 had, during the immediately preceding tax year, gross income in  
7 excess of one hundred thousand dollars (\$100,000) and reasonably  
8 expects gross income in excess of one hundred thousand dollars  
9 (\$100,000) during the current tax year or (ii) has a minimum net  
10 worth of five hundred thousand dollars (\$500,000). "Net worth"  
11 shall be determined exclusive of home, home furnishings, and  
12 automobiles. Other assets included in the computation of net worth  
13 may be valued at fair market value.

14 Each natural person specified above, by reason of his or her  
15 business or financial experience, or the business or financial  
16 experience of his or her professional adviser, who is unaffiliated  
17 with and who is not compensated, directly or indirectly, by the  
18 issuer or any affiliate or selling agent of the issuer, can be  
19 reasonably assumed to have the capacity to protect his or her  
20 interests in connection with the transaction. The amount of the  
21 investment of each natural person shall not exceed 10 percent of  
22 the net worth, as determined by this subparagraph, of that natural  
23 person.

24 (F) Any other purchaser designated as qualified by rule of the  
25 commissioner.

26 (3) Each purchaser represents that the purchaser is purchasing  
27 for the purchaser's own account (or trust account, if the purchaser  
28 is a trustee) and not with a view to or for sale in connection with  
29 a distribution of the security.

30 (4) Each natural person purchaser, including a corporation,  
31 partnership, or other organization specifically formed by natural  
32 persons for the purpose of acquiring the securities offered by the  
33 issuer, receives, at least five business days before securities are  
34 sold to, or a commitment to purchase is accepted from, the  
35 purchaser, a written offering disclosure statement that shall meet  
36 the disclosure requirements of Regulation D (17 C.F.R. 230.501  
37 et seq.), and any other information as may be prescribed by rule  
38 of the commissioner, provided that the issuer shall not be obligated  
39 pursuant to this paragraph to provide this disclosure statement to  
40 a natural person qualified under Section 260.102.13 of Title 10 of

1 the California Code of Regulations. The offer or sale of securities  
2 pursuant to a disclosure statement required by this paragraph that  
3 is in violation of Section 25401, or that fails to meet the disclosure  
4 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall  
5 not render unavailable to the issuer the claim of an exemption from  
6 Section 25110 afforded by this subdivision. This paragraph does  
7 not impose, directly or indirectly, any additional disclosure  
8 obligation with respect to any other exemption from qualification  
9 available under any other provision of this section.

10 (5) (A) A general announcement of proposed offering may be  
11 published by written document only, provided that the general  
12 announcement of proposed offering sets forth the following  
13 required information:

14 (i) The name of the issuer of the securities.

15 (ii) The full title of the security to be issued.

16 (iii) The anticipated suitability standards for prospective  
17 purchasers.

18 (iv) A statement that (I) no money or other consideration is  
19 being solicited or will be accepted, (II) an indication of interest  
20 made by a prospective purchaser involves no obligation or  
21 commitment of any kind, and, if the issuer is required by paragraph  
22 (4) to deliver a disclosure statement to prospective purchasers,  
23 (III) no sales will be made or commitment to purchase accepted  
24 until five business days after delivery of a disclosure statement  
25 and subscription information to the prospective purchaser in  
26 accordance with the requirements of this subdivision.

27 (v) Any other information required by rule of the commissioner.

28 (vi) The following legend: "For more complete information  
29 about (Name of Issuer) and (Full Title of Security), send for  
30 additional information from (Name and Address) by sending this  
31 coupon or calling (Telephone Number)."

32 (B) The general announcement of proposed offering referred  
33 to in subparagraph (A) may also set forth the following  
34 information:

35 (i) A brief description of the business of the issuer.

36 (ii) The geographic location of the issuer and its business.

37 (iii) The price of the security to be issued, or, if the price is not  
38 known, the method of its determination or the probable price range  
39 as specified by the issuer, and the aggregate offering price.

1 (C) The general announcement of proposed offering shall  
2 contain only the information that is set forth in this paragraph.

3 (D) Dissemination of the general announcement of proposed  
4 offering to persons who are not qualified purchasers, without more,  
5 shall not disqualify the issuer from claiming the exemption under  
6 this subdivision.

7 (6) No telephone solicitation shall be permitted until the issuer  
8 has determined that the prospective purchaser to be solicited is a  
9 qualified purchaser.

10 (7) The issuer files a notice of transaction under this subdivision  
11 both (A) concurrent with the publication of a general announcement  
12 of proposed offering or at the time of the initial offer of the  
13 securities, whichever occurs first, accompanied by a filing fee, and  
14 (B) within 10 business days following the close or abandonment  
15 of the offering, but in no case more than 210 days from the date  
16 of filing the first notice. The first notice of transaction under  
17 subparagraph (A) shall contain an undertaking, in a form acceptable  
18 to the commissioner, to deliver any disclosure statement required  
19 by paragraph (4) to be delivered to prospective purchasers, and  
20 any supplement thereto, to the commissioner within 10 days of  
21 the commissioner's request for the information. The exemption  
22 from qualification afforded by this subdivision is unavailable if  
23 an issuer fails to file the first notice required under subparagraph  
24 (A) or to pay the filing fee. The commissioner has the authority  
25 to assess an administrative penalty of up to one thousand dollars  
26 (\$1,000) against an issuer that fails to deliver the disclosure  
27 statement required to be delivered to the commissioner upon the  
28 commissioner's request within the time period set forth above.  
29 Neither the filing of the disclosure statement nor the failure by the  
30 commissioner to comment thereon precludes the commissioner  
31 from taking any action deemed necessary or appropriate under this  
32 division with respect to the offer and sale of the securities.

33 (o) An offer or sale of any security issued by a corporation or  
34 limited liability company pursuant to a purchase plan or agreement,  
35 or issued pursuant to an option plan or agreement, where the  
36 security at the time of issuance or grant is exempt from registration  
37 under the Securities Act of 1933, as amended, pursuant to Rule  
38 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions  
39 of which are hereby incorporated by reference into this section,  
40 provided that (1) the terms of any purchase plan or agreement shall

1 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of  
2 Title 10 of the California Code of Regulations, (2) the terms of  
3 any option plan or agreement shall comply with Sections  
4 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the  
5 California Code of Regulations, and (3) the issuer files a notice of  
6 transaction in accordance with rules adopted by the commissioner  
7 no later than 30 days after the initial issuance of any security under  
8 that plan, accompanied by a filing fee as prescribed by subdivision  
9 (y) of Section 25608. The failure to file the notice of transaction  
10 within the time specified in this subdivision shall not affect the  
11 availability of this exemption. An issuer that fails to file the notice  
12 shall, within 15 business days after discovery of the failure to file  
13 the notice or after demand by the commissioner, whichever occurs  
14 first, file the notice and pay the commissioner a fee equal to the  
15 maximum aggregate fee payable had the transaction been qualified  
16 under Section 25110.

17 Offers and sales exempt pursuant to this subdivision shall be  
18 deemed to be part of a single, discrete offering and are not subject  
19 to integration with any other offering or sale, whether qualified  
20 under Chapter 2 (commencing with Section 25110), or otherwise  
21 exempt, or not subject to qualification.

22 (p) An offer or sale of nonredeemable securities to accredited  
23 investors (Section 28031) by a person licensed under the Capital  
24 Access Company Law (Division 3 (commencing with Section  
25 28000) of Title 4), provided that all purchasers either (1) have a  
26 preexisting personal or business relationship with the offeror or  
27 any of its partners, officers, directors, controlling persons, or  
28 managers (as appointed or elected by the members), or (2) by  
29 reason of their business or financial experience or the business or  
30 financial experience of their professional advisers who are  
31 unaffiliated with and who are not compensated by the issuer or  
32 any affiliate or selling agent of the issuer, directly or indirectly,  
33 could be reasonably assumed to have the capacity to protect their  
34 own interests in connection with the transaction. All nonredeemable  
35 securities shall be evidenced by certificates that shall have stamped  
36 or printed prominently on their face a legend in a form to be  
37 prescribed by rule or order of the commissioner restricting transfer  
38 of the securities in the manner as the rule or order provides. The  
39 exemption under this subdivision shall not be available for any  
40 offering that is exempt or asserted to be exempt pursuant to Section



1 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))  
2 or Rule 147 (17 C.F.R. ~~See: 230.147~~) thereunder or otherwise is  
3 conducted by means of any form of general solicitation or general  
4 advertising.

5 (q) Any offer or sale of any viatical or life settlement contract  
6 or fractionalized or pooled interest therein in a transaction that  
7 meets all of the following criteria:

8 (1) Sales of securities described in this subdivision are made  
9 only to qualified purchasers or other persons the issuer reasonably  
10 believes, after reasonable inquiry, to be qualified purchasers. A  
11 corporation, partnership, or other organization specifically formed  
12 for the purpose of acquiring the securities offered by the issuer in  
13 reliance upon this exemption may be a qualified purchaser only if  
14 each of the equity owners of the corporation, partnership, or other  
15 organization is a qualified purchaser. Qualified purchasers include  
16 the following:

17 (A) A person designated in Section 260.102.13 of Title 10 of  
18 the California Code of Regulations.

19 (B) A person designated in subdivision (i) or any rule of the  
20 commissioner adopted thereunder.

21 (C) A pension or profit-sharing trust of the issuer, a  
22 self-employed individual retirement plan, or an individual  
23 retirement account, if the investment decisions made on behalf of  
24 the trust, plan, or account are made solely by persons who are  
25 qualified purchasers.

26 (D) An organization described in Section 501(c)(3) of the  
27 Internal Revenue Code, corporation, Massachusetts or similar  
28 business trust, or partnership, each with total assets in excess of  
29 five million dollars (\$5,000,000) according to its most recent  
30 audited financial statements.

31 (E) A natural person who, either individually or jointly with the  
32 person's spouse, (i) has a minimum net worth of one hundred fifty  
33 thousand dollars (\$150,000) and had, during the immediately  
34 preceding tax year, gross income in excess of one hundred thousand  
35 dollars (\$100,000) and reasonably expects gross income in excess  
36 of one hundred thousand dollars (\$100,000) during the current tax  
37 year or (ii) has a minimum net worth of two hundred fifty thousand  
38 dollars (\$250,000). "Net worth" shall be determined exclusive of  
39 home, home furnishings, and automobiles. Other assets included  
40 in the computation of net worth may be valued at fair market value.

1 Each natural person specified above, by reason of his or her  
2 business or financial experience, or the business or financial  
3 experience of his or her professional adviser, who is unaffiliated  
4 with and who is not compensated, directly or indirectly, by the  
5 issuer or any affiliate or selling agent of the issuer, can be  
6 reasonably assumed to have the capacity to protect his or her  
7 interests in connection with the transaction.

8 The amount of the investment of each natural person shall not  
9 exceed 10 percent of the net worth, as determined by this  
10 subdivision, of that natural person.

11 (F) Any other purchaser designated as qualified by rule of the  
12 commissioner.

13 (2) Each purchaser represents that the purchaser is purchasing  
14 for the purchaser's own account (or trust account, if the purchaser  
15 is a trustee) and not with a view to or for sale in connection with  
16 a distribution of the security.

17 (3) Each natural person purchaser, including a corporation,  
18 partnership, or other organization specifically formed by natural  
19 persons for the purpose of acquiring the securities offered by the  
20 issuer, receives, at least five business days before securities  
21 described in this subdivision are sold to, or a commitment to  
22 purchase is accepted from, the purchaser, the following information  
23 in writing:

24 (A) The name, principal business and mailing address, and  
25 telephone number of the issuer.

26 (B) The suitability standards for prospective purchasers as set  
27 forth in paragraph (1) of this subdivision.

28 (C) A description of the issuer's type of business organization  
29 and the state in which the issuer is organized or incorporated.

30 (D) A brief description of the business of the issuer.

31 (E) If the issuer retains ownership or becomes the beneficiary  
32 of the insurance policy, an audit report of an independent certified  
33 public accountant together with a balance sheet and related  
34 statements of income, retained earnings, and cashflows that reflect  
35 the issuer's financial position, the results of the issuer's operations,  
36 and the issuer's cashflows as of a date within 15 months before  
37 the date of the initial issuance of the securities described in this  
38 subdivision. The financial statements listed in this subparagraph  
39 shall be prepared in conformity with generally accepted accounting  
40 principles. If the date of the audit report is more than 120 days

1 before the date of the initial issuance of the securities described  
2 in this subdivision, the issuer shall provide unaudited interim  
3 financial statements.

4 (F) The names of all directors, officers, partners, members, or  
5 trustees of the issuer.

6 (G) A description of any order, judgment, or decree that is final  
7 as to the issuing entity of any state, federal, or foreign country  
8 governmental agency or administrator, or of any state, ~~federal~~  
9 ~~federal~~, or foreign country court of competent jurisdiction (i)  
10 revoking, suspending, denying, or censuring for cause any license,  
11 permit, or other authority of the issuer or of any director, officer,  
12 partner, member, trustee, or person owning or controlling, directly  
13 or indirectly, 10 percent or more of the outstanding interest or  
14 equity securities of the issuer, to engage in the securities,  
15 commodities, franchise, insurance, real estate, or lending business  
16 or in the offer or sale of securities, commodities, franchises,  
17 insurance, real estate, or ~~loans~~, *loans*; (ii) permanently restraining,  
18 enjoining, barring, suspending, or censuring any such person from  
19 engaging in or continuing any conduct, practice, or employment  
20 in connection with the offer or sale of securities, commodities,  
21 franchises, insurance, real estate, or ~~loans~~, *loans*; (iii) convicting  
22 any such person of, or pleading nolo contendere by any such person  
23 to, any felony or misdemeanor involving a security, commodity,  
24 franchise, insurance, real estate, or loan, or any aspect of the  
25 securities, commodities, franchise, insurance, real estate, or lending  
26 business, or involving dishonesty, fraud, deceit, embezzlement,  
27 fraudulent conversion, or misappropriation of ~~property~~, *property*;  
28 or (iv) holding any such person liable in a civil action involving  
29 breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent  
30 conversion, or misappropriation of property. This subparagraph  
31 does not apply to any order, judgment, or decree that has been  
32 vacated, overturned, or is more than 10 years old.

33 (H) Notice of the purchaser's right to rescind or cancel the  
34 investment and receive a refund pursuant to Section 25508.5.

35 (I) The name, address, and telephone number of the issuing  
36 insurance company, and the name, address, and telephone number  
37 of the state or foreign country regulator of the insurance company.

38 (J) The total face value of the insurance policy and the  
39 percentage of the insurance policy the purchaser will own.

40 (K) The insurance policy number, issue date, and type.

1 (L) If a group insurance policy, the name, address, and telephone  
2 number of the group, and, if applicable, the material terms and  
3 conditions of converting the policy to an individual policy,  
4 including the amount of increased premiums.

5 (M) If a term insurance policy, the term and the name, address,  
6 and telephone number of the person who will be responsible for  
7 renewing the policy if necessary.

8 (N) That the insurance policy is beyond the state statute for  
9 contestability and the reason therefor.

10 (O) The insurance policy premiums and terms of premium  
11 payments.

12 (P) The amount of the purchaser's moneys that will be set aside  
13 to pay premiums.

14 (Q) The name, address, and telephone number of the person  
15 who will be the insurance policy owner and the person who will  
16 be responsible for paying premiums.

17 (R) The date on which the purchaser will be required to pay  
18 premiums and the amount of the premium, if known.

19 (S) A statement to the effect that any projected rate of return to  
20 the purchaser from the purchase of a viatical or life settlement  
21 contract or a fractionalized or pooled interest therein is based on  
22 an estimated life expectancy for the person insured under the life  
23 insurance policy; that the return on the purchase may vary  
24 substantially from the expected rate of return based upon the actual  
25 life expectancy of the insured that may be less than, equal to, or  
26 may greatly exceed the estimated life expectancy; and that the rate  
27 of return would be higher if the actual life expectancy were less  
28 than, and lower if the actual life expectancy were greater than, the  
29 estimated life expectancy of the insured at the time the viatical or  
30 life settlement contract was closed.

31 (T) A statement that the purchaser should consult with his or  
32 her tax adviser regarding the tax consequences of the purchase of  
33 the viatical or life settlement contract or fractionalized or pooled  
34 interest therein and, if the purchaser is using retirement funds or  
35 accounts for that purchase, whether or not any adverse tax  
36 consequences might result from the use of those funds for the  
37 purchase of that investment.

38 (U) Any other information as may be prescribed by rule of the  
39 commissioner.

1 (r) (1) (A) Any offer of a security by an issuer using any form  
2 of general solicitation or general advertising as specified in Rule  
3 502(c) of Regulation D under the Securities Act of 1933 (17 C.F.R.  
4 230.502(c)), except as provided in subparagraph (B).

5 (B) Any offer of a security made by means of an unsolicited  
6 telephone call to a person's residence or cellular telephone, unless  
7 the issuer and the caller take reasonable steps, prior to the  
8 unsolicited telephone call, to verify that the person is an accredited  
9 investor, as defined in Rule 501 of Regulation D promulgated  
10 under the Securities Act of 1933, as amended (17 C.F.R. 230.501),  
11 and the transaction meets all the requirements of this subdivision.

12 (2) The aggregate offering price for an offering of securities  
13 under this subdivision, as defined in Rule 501(c) of Regulation D  
14 under the Securities Act of 1933 (17 C.F.R. 230.501(c)), shall not  
15 exceed one million dollars (\$1,000,000), less the aggregate offering  
16 price for all securities sold within 12 months before the start of  
17 and during the offering of securities pursuant to the exemption  
18 under this subdivision.

19 (3) (A) Prior to selling any security to a person solicited  
20 pursuant to this subdivision, an issuer shall obtain from that person  
21 a completed offeree questionnaire in a form adopted by the  
22 commissioner.

23 (B) An issuer shall not solely rely on the questionnaire in making  
24 the determination of whether the person is an accredited investor  
25 and the offering is suitable to that person.

26 (C) The issuer shall maintain the confidentiality of any and all  
27 information in the questionnaire and not otherwise sell, distribute,  
28 or use the information in that questionnaire for any purpose other  
29 than to assist in establishing the suitability of that investor for that  
30 particular offering. A violation of this paragraph shall result in  
31 disqualification of the offering and from the future use of this  
32 exemption under this subdivision by the issuer.

33 (4) Sales of securities shall be made only to a person who is,  
34 or with respect to whom the issuer has taken reasonable steps to  
35 verify is, an accredited investor immediately prior to the sale.

36 (5) The issuer has taken reasonable steps to verify that,  
37 immediately prior to the sale, the offering is suitable for the person,  
38 based on the person's financial status, objectives, investment  
39 experience, time horizon, risk tolerance, and any other information  
40 the issuer deems relevant to determine whether the offering is

1 *suitable to the person. The issuer shall maintain, for a period of*  
2 *four years, documentation sufficient to establish the basis for its*  
3 *determination of suitability.*

4 (6) (A) *The issuer shall provide to the person, in writing, at a*  
5 *minimum, the following: (i) information detailing its business, its*  
6 *properties, its competition, the identity of its officers and directors*  
7 *and their compensation, material transactions between the*  
8 *company and its officers and directors, material legal proceedings*  
9 *involving the company or its officers and directors, the plan for*  
10 *distributing the securities, and the intended use of the proceeds of*  
11 *the offering; (ii) disclosures of all risk factors associated with the*  
12 *offering, including, but not limited to, lack of business operating*  
13 *history, adverse economic conditions in a particular industry, lack*  
14 *of a market for the securities offered, and dependence upon key*  
15 *personnel, and (iii) a statement detailing the financial condition*  
16 *of the issuer and supporting documentation.*

17 (B) *Upon providing this information to the investor, there shall*  
18 *be a mandatory 24-hour waiting period before a sale may be made*  
19 *and the investor shall have the right to void the contract within*  
20 *the first 72 hours of the sale.*

21 (7) *If the person is a natural person, the amount of consideration*  
22 *paid by the purchaser does not exceed 5 percent of his or her net*  
23 *worth, or joint net worth with the purchaser's spouse or domestic*  
24 *partner, immediately prior to the investment, and each investor's*  
25 *investment in the offering, together with all previous offerings*  
26 *under this subdivision made during the previous 12 months, does*  
27 *not exceed 5 percent of his or her net worth. "Net worth" shall be*  
28 *determined as specified in Rule 501(a) of Regulation D*  
29 *promulgated by the Securities and Exchange Commission under*  
30 *the Securities Act of 1933, as amended (17 C.F.R. 230.501(a)).*

31 (8) *The issuer can reasonably assume that the person has the*  
32 *capacity to protect his or her interests in connection with the*  
33 *offering due to his or her business or financial experience, or the*  
34 *business or financial experience of his or her professional adviser,*  
35 *who is unaffiliated with and not compensated, directly or indirectly,*  
36 *by the issuer or any affiliate or selling agent of the issuer.*

37 (9) *The issuer believes in good faith that the offer and sale are*  
38 *exempt from registration under Section 5 of the Securities Act of*  
39 *1933 (15 U.S.C. Sec. 77e) pursuant to Section 3(a)(11) of the act*  
40 *(15 U.S.C. Sec. 77c(a)(11)), or the rules and regulations adopted*

1 *by the Securities and Exchange Commission under Section 3(b)*  
2 *or Section 4(2) of the act (15 U.S.C. Sec. 77d(2)).*

3 *(10) The issuer specifies in all advertisements, communications,*  
4 *sales literature, or other information that is publicly disseminated*  
5 *in connection with the offering, including by means of electronic*  
6 *transmission or broadcast media, that the securities will be sold*  
7 *to accredited investors only, and the offering is exempt from the*  
8 *qualification requirements of Section 25110 under the exemption*  
9 *provided for in this subdivision.*

10 *(11) The issuer places a legend on the cover page of each*  
11 *disclosure document proposed to be used in connection with the*  
12 *offering or on the cover page of the subscription agreement*  
13 *advising that the securities described in the disclosure document*  
14 *or subscription agreement will be sold to accredited investors*  
15 *only, and the offering is exempted from the qualification*  
16 *requirements of Section 25110 under the exemption provided for*  
17 *in this subdivision.*

18 *(12) Dissemination of information regarding the proposed*  
19 *offering to a person who is not an accredited investor shall not*  
20 *disqualify the offering from the exemption under this subdivision.*

21 *(13) An issuer shall maintain a copy of any advertisement or*  
22 *solicitation, and any other offering material, for four years.*

23 *(14) The issuer shall file with the commissioner a notice*  
24 *pursuant to Section 25102.1 and pay the fee specified in subdivision*  
25 *(c) of Section 25608.1 within 15 days after the first sale of the*  
26 *securities in this state. Upon filing of this notice, the issuer shall*  
27 *also pay a five-dollar (\$5) fee to be deposited in the Victims of*  
28 *Corporate Fraud Compensation Fund.*

29 *(15) (A) A person who purchases securities in an offering that*  
30 *fails to meet all the terms and conditions of this subdivision may*  
31 *bring an action under Sections 25503, 25504, and 25504.1 for*  
32 *rescission of the purchase and any other remedy provided in those*  
33 *sections.*

34 *(B) Any purchaser of a security pursuant to this subdivision*  
35 *may bring an action against anyone who employs, directly or*  
36 *indirectly, any device, scheme, or other artifice to defraud in*  
37 *connection with the offer, purchase, or sale of any security issued*  
38 *under this subdivision.*

39 *(C) A person who purchases securities in an offering under this*  
40 *subdivision that fails to meet all the terms and conditions of this*

1 subdivision may also bring an action to seek any other remedies  
2 available at law.

3 (D) In any action by a purchaser under this subdivision, the  
4 issuer shall have the burden of proof to demonstrate that the  
5 requirements of the exemption under this subdivision were met.

6 (E) The court shall award attorney's fees and costs to a  
7 prevailing purchaser in any such action and may award treble or  
8 punitive damages.

9 (16) The exemption is not available for an offering by an issuer  
10 who is (A) an investment company as defined in Section 3(a)(1)  
11 of the Investment Company Act of 1940 (15 U.S.C. Sec. 80a et  
12 seq.), or (B) a development stage company as referred to in Rule  
13 504(a)(3) under the Securities Act of 1933.

14 (17) The exemption under this subdivision is not available to  
15 an issuer if any of the following apply to the issuer or its  
16 predecessors, affiliates, directors, officers, general partners,  
17 beneficial owners of 10 percent or more of any classification of  
18 its equity securities, promoters presently connected with the issuer  
19 in any capacity, or any underwriter of the securities to be offered,  
20 or any of the underwriter's partners, directors, or officers:

21 (A) Within the 10 years immediately prior to the first offer of  
22 the security, the person has filed a registration statement that is  
23 the subject of a currently effective stop order entered by any state  
24 securities administrator or the Securities and Exchange  
25 Commission.

26 (B) The person has been convicted of any criminal offense  
27 involving fraud, deceit, or any offense concerning the offer,  
28 purchase, or sale of any security, or is subject to any order,  
29 judgment, or decree of any court of competent jurisdiction  
30 involving the commission of elder or dependent adult financial  
31 abuse.

32 (C) The person is currently subject to a state or federal  
33 administrative enforcement order or judgment entered within the  
34 10 years immediately prior to the first offer of the security finding  
35 fraud or deceit in connection with the purchase or sale of any  
36 security.

37 (D) The person is currently subject to any order, judgment, or  
38 decree of any court of competent jurisdiction, entered within the  
39 10 years immediately prior to the first offer of the security,  
40 temporarily, preliminarily, or permanently restraining or enjoining



1 *the person from engaging in or continuing to engage in any*  
2 *conduct or practice involving fraud or deceit in connection with*  
3 *the purchase or sale of any security, except if any of the following*  
4 *apply:*

5 *(i) The person is licensed or registered to conduct*  
6 *securities-related business in the state in which the order,*  
7 *judgment, or decree described in subparagraph (A), (B), (C), or*  
8 *(D) was entered against the person.*

9 *(ii) Before the first offer of securities is made in reliance upon*  
10 *the exemption under this subdivision, the state securities*  
11 *administrator, the court, or the regulatory authority that entered*  
12 *the order, judgment, or decree removes, reverses, or vacates the*  
13 *order, judgment, or decree.*

14 *(iii) The issuer, exercising reasonable care and based on a*  
15 *factual inquiry, establishes that it could not have known of the*  
16 *existence of circumstances described in subparagraph (A), (B),*  
17 *(C), or (D).*

18 *(s) This section shall remain in effect only until January 1, 2016,*  
19 *and as of that date is repealed, unless a later enacted statute, that*  
20 *is enacted before January 1, 2016, deletes or extends that date.*

21 SEC. 2. Section 25102 is added to the Corporations Code, to  
22 read:

23 25102. The following transactions are exempted from the  
24 provisions of Section 25110:

25 (a) Any offer (but not a sale) not involving any public offering  
26 and the execution and delivery of any agreement for the sale of  
27 securities pursuant to the offer if (1) the agreement contains  
28 substantially the following provision: “The sale of the securities  
29 that are the subject of this agreement has not been qualified with  
30 the Commissioner of Corporations of the State of California and  
31 the issuance of the securities or the payment or receipt of any part  
32 of the consideration therefor prior to the qualification is unlawful,  
33 unless the sale of securities is exempt from the qualification by  
34 Section 25100, 25102, or 25105 of the California Corporations  
35 Code. The rights of all parties to this agreement are expressly  
36 conditioned upon the qualification being obtained, unless the sale  
37 is so exempt”; and (2) no part of the purchase price is paid or  
38 received and none of the securities are issued until the sale of the  
39 securities is qualified under this law unless the sale of securities

1 is exempt from the qualification by this section, Section 25100,  
2 or 25105.

3 (b) Any offer (but not a sale) of a security for which a  
4 registration statement has been filed under the Securities Act of  
5 1933 but has not yet become effective, or for which an offering  
6 statement under Regulation A has been filed but has not yet been  
7 qualified, if no stop order or refusal order is in effect and no public  
8 proceeding or examination looking toward an order is pending  
9 under Section 8 of the act and no order under Section 25140 or  
10 subdivision (a) of Section 25143 is in effect under this law.

11 (c) Any offer (but not a sale) and the execution and delivery of  
12 any agreement for the sale of securities pursuant to the offer as  
13 may be permitted by the commissioner upon application. Any  
14 negotiating permit under this subdivision shall be conditioned to  
15 the effect that none of the securities may be issued and none of  
16 the consideration therefor may be received or accepted until the  
17 sale of the securities is qualified under this law.

18 (d) Any transaction or agreement between the issuer and an  
19 underwriter or among underwriters if the sale of the securities is  
20 qualified, or exempt from qualification, at the time of distribution  
21 thereof in this state, if any.

22 (e) Any offer or sale of any evidence of indebtedness, whether  
23 secured or unsecured, and any guarantee thereof, in a transaction  
24 not involving any public offering.

25 (f) Any offer or sale of any security in a transaction (other than  
26 an offer or sale to a pension or profit-sharing trust of the issuer)  
27 that meets each of the following criteria:

28 (1) Sales of the security are not made to more than 35 persons,  
29 including persons not in this state.

30 (2) All purchasers either have a preexisting personal or business  
31 relationship with the offeror or any of its partners, officers,  
32 directors or controlling persons, or managers (as appointed or  
33 elected by the members) if the offeror is a limited liability  
34 company, or by reason of their business or financial experience or  
35 the business or financial experience of their professional advisers  
36 who are unaffiliated with and who are not compensated by the  
37 issuer or any affiliate or selling agent of the issuer, directly or  
38 indirectly, could be reasonably assumed to have the capacity to  
39 protect their own interests in connection with the transaction.

1 (3) Each purchaser represents that the purchaser is purchasing  
2 for the purchaser's own account (or a trust account if the purchaser  
3 is a trustee) and not with a view to or for sale in connection with  
4 any distribution of the security.

5 (4) The offer and sale of the security is not accomplished by  
6 the publication of any advertisement. The number of purchasers  
7 referred to above is exclusive of any described in subdivision (i),  
8 any officer, director, or affiliate of the issuer, or manager (as  
9 appointed or elected by the members) if the issuer is a limited  
10 liability company, and any other purchaser who the commissioner  
11 designates by rule. For purposes of this section, a husband and  
12 wife (together with any custodian or trustee acting for the account  
13 of their minor children) are counted as one person and a  
14 partnership, corporation, or other organization that was not  
15 specifically formed for the purpose of purchasing the security  
16 offered in reliance upon this exemption, is counted as one person.  
17 The commissioner may by rule require the issuer to file a notice  
18 of transactions under this subdivision.

19 The failure to file the notice or the failure to file the notice within  
20 the time specified by the rule of the commissioner shall not affect  
21 the availability of this exemption. An issuer who fails to file the  
22 notice as provided by rule of the commissioner shall, within 15  
23 business days after discovery of the failure to file the notice or  
24 after demand by the commissioner, whichever occurs first, file the  
25 notice and pay to the commissioner a fee equal to the fee payable  
26 had the transaction been qualified under Section 25110.

27 (g) Any offer or sale of conditional sale agreements, equipment  
28 trust certificates, or certificates of interest or participation therein  
29 or partial assignments thereof, covering the purchase of railroad  
30 rolling stock or equipment or the purchase of motor vehicles,  
31 aircraft, or parts thereof, in a transaction not involving any public  
32 offering.

33 (h) Any offer or sale of voting common stock by a corporation  
34 incorporated in any state if, immediately after the proposed sale  
35 and issuance, there will be only one class of stock of the  
36 corporation outstanding that is owned beneficially by no more than  
37 35 persons, provided all of the following requirements have been  
38 met:

1 (1) The offer and sale of the stock is not accompanied by the  
2 publication of any advertisement, and no selling expenses have  
3 been given, paid, or incurred in connection therewith.

4 (2) The consideration to be received by the issuer for the stock  
5 to be issued consists of any of the following:

6 (A) Only assets (which may include cash) of an existing business  
7 enterprise transferred to the issuer upon its initial organization, of  
8 which all of the persons who are to receive the stock to be issued  
9 pursuant to this exemption were owners during, and the enterprise  
10 was operated for, a period of not less than one year immediately  
11 preceding the proposed issuance, and the ownership of the  
12 enterprise immediately prior to the proposed issuance was in the  
13 same proportions as the shares of stock are to be issued.

14 (B) Only cash or cancellation of indebtedness for money  
15 borrowed, or both, upon the initial organization of the issuer,  
16 provided all of the stock is issued for the same price per share.

17 (C) Only cash, provided the sale is approved in writing by each  
18 of the existing shareholders and the purchaser or purchasers are  
19 existing shareholders.

20 (D) In a case where after the proposed issuance there will be  
21 only one owner of the stock of the issuer, only any legal  
22 consideration.

23 (3) No promotional consideration has been given, paid, or  
24 incurred in connection with the issuance. Promotional consideration  
25 means any consideration paid directly or indirectly to a person  
26 who, acting alone or in conjunction with one or more other persons,  
27 takes the initiative in founding and organizing the business or  
28 enterprise of an issuer for services rendered in connection with the  
29 founding or organizing.

30 (4) A notice in a form prescribed by rule of the commissioner,  
31 signed by an active member of the State Bar of California, is filed  
32 with or mailed for filing to the commissioner not later than 10  
33 business days after receipt of consideration for the securities by  
34 the issuer. That notice shall contain an opinion of the member of  
35 the State Bar of California that the exemption provided by this  
36 subdivision is available for the offer and sale of the securities. The  
37 failure to file the notice as required by this subdivision and the  
38 rules of the commissioner shall not affect the availability of this  
39 exemption. An issuer who fails to file the notice within the time  
40 specified by this subdivision shall, within 15 business days after

1 discovery of the failure to file the notice or after demand by the  
2 commissioner, whichever occurs first, file the notice and pay to  
3 the commissioner a fee equal to the fee payable had the transaction  
4 been qualified under Section 25110. The notice, except when filed  
5 on behalf of a California corporation, shall be accompanied by an  
6 irrevocable consent, in the form that the commissioner by rule  
7 prescribes, appointing the commissioner or his or her successor in  
8 office to be the issuer's attorney to receive service of any lawful  
9 process in any noncriminal suit, action, or proceeding against it  
10 or its successor that arises under this law or any rule or order  
11 hereunder after the consent has been filed, with the same force and  
12 validity as if served personally on the issuer. An issuer on whose  
13 behalf a consent has been filed in connection with a previous  
14 qualification or exemption from qualification under this law (or  
15 application for a permit under any prior law if the application or  
16 notice under this law states that the consent is still effective) need  
17 not file another. Service may be made by leaving a copy of the  
18 process in the office of the commissioner, but it is not effective  
19 unless (A) the plaintiff, who may be the commissioner in a suit,  
20 action, or proceeding instituted by him or her, forthwith sends  
21 notice of the service and a copy of the process by registered or  
22 certified mail to the defendant or respondent at its last address on  
23 file with the commissioner, and (B) the plaintiff's affidavit of  
24 compliance with this section is filed in the case on or before the  
25 return day of the process, if any, or within the further time as the  
26 court allows.

27 (5) Each purchaser represents that the purchaser is purchasing  
28 for the purchaser's own account, or a trust account if the purchaser  
29 is a trustee, and not with a view to or for sale in connection with  
30 any distribution of the stock.

31 For the purposes of this subdivision, all securities held by a  
32 husband and wife, whether or not jointly, shall be considered to  
33 be owned by one person, and all securities held by a corporation  
34 that has issued stock pursuant to this exemption shall be considered  
35 to be held by the shareholders to whom it has issued the stock.

36 All stock issued by a corporation pursuant to this subdivision as  
37 it existed prior to the effective date of the amendments to this  
38 section made during the 1996 portion of the 1995–96 Regular  
39 Session that required the issuer to have stamped or printed  
40 prominently on the face of the stock certificate a legend in a form

1 prescribed by rule of the commissioner restricting transfer of the  
2 stock in a manner provided for by that rule shall not be subject to  
3 the transfer restriction legend requirement and, by operation of  
4 law, the corporation is authorized to remove that transfer restriction  
5 legend from the certificates of those shares of stock issued by the  
6 corporation pursuant to this subdivision as it existed prior to the  
7 effective date of the amendments to this section made during the  
8 1996 portion of the 1995–96 Regular Session.

9 (i) Any offer or sale (1) to a bank, savings and loan association,  
10 trust company, insurance company, investment company registered  
11 under the Investment Company Act of 1940, pension or  
12 profit-sharing trust (other than a pension or profit-sharing trust of  
13 the issuer, a self-employed individual retirement plan, or individual  
14 retirement account), or other institutional investor or governmental  
15 agency or instrumentality that the commissioner may designate  
16 by rule, whether the purchaser is acting for itself or as trustee, or  
17 (2) to any corporation with outstanding securities registered under  
18 Section 12 of the Securities Exchange Act of 1934 or any wholly  
19 owned subsidiary of the corporation that after the offer and sale  
20 will own directly or indirectly 100 percent of the outstanding  
21 capital stock of the issuer, provided the purchaser represents that  
22 it is purchasing for its own account (or for the trust account) for  
23 investment and not with a view to or for sale in connection with  
24 any distribution of the security.

25 (j) Any offer or sale of any certificate of interest or participation  
26 in an oil or gas title or lease (including subsurface gas storage and  
27 payments out of production) if either of the following apply:

28 (1) All of the purchasers meet one of the following requirements:

29 (A) Are and have been during the preceding two years engaged  
30 primarily in the business of drilling for, producing, or refining oil  
31 or gas (or whose corporate predecessor, in the case of a corporation,  
32 has been so engaged).

33 (B) Are persons described in paragraph (1) of subdivision (i).

34 (C) Have been found by the commissioner upon written  
35 application to be substantially engaged in the business of drilling  
36 for, producing, or refining oil or gas so as not to require the  
37 protection provided by this law (which finding shall be effective  
38 until rescinded).

39 (2) The security is concurrently hypothecated to a bank in the  
40 ordinary course of business to secure a loan made by the bank,

1 provided that each purchaser represents that it is purchasing for  
2 its own account for investment and not with a view to or for sale  
3 in connection with any distribution of the security.

4 (k) Any offer or sale of any security under, or pursuant to, a  
5 plan of reorganization under Chapter 11 of the federal bankruptcy  
6 law that has been confirmed or is subject to confirmation by the  
7 decree or order of a court of competent jurisdiction.

8 (l) Any offer or sale of an option, warrant, put, call, or straddle,  
9 and any guarantee of any of these securities, by a person who is  
10 not the issuer of the security subject to the right, if the transaction,  
11 had it involved an offer or sale of the security subject to the right  
12 by the person, would not have violated Section 25110 or 25130.

13 (m) Any offer or sale of a stock to a pension, profit-sharing,  
14 stock bonus, or employee stock ownership plan, provided that (1)  
15 the plan meets the requirements for qualification under Section  
16 401 of the Internal Revenue Code, and (2) the employees are not  
17 required or permitted individually to make any contributions to  
18 the plan. The exemption provided by this subdivision shall not be  
19 affected by whether the stock is contributed to the plan, purchased  
20 from the issuer with contributions by the issuer or an affiliate of  
21 the issuer, or purchased from the issuer with funds borrowed from  
22 the issuer, an affiliate of the issuer, or any other lender.

23 (n) Any offer or sale of any security in a transaction, other than  
24 an offer or sale of a security in a rollup transaction, that meets all  
25 of the following criteria:

26 (1) The issuer is (A) a California corporation or foreign  
27 corporation that, at the time of the filing of the notice required  
28 under this subdivision, is subject to Section 2115, or (B) any other  
29 form of business entity, including without limitation a partnership  
30 or trust organized under the laws of this state. The exemption  
31 provided by this subdivision is not available to a “blind pool”  
32 issuer, as that term is defined by the commissioner, or to an  
33 investment company subject to the Investment Company Act of  
34 1940.

35 (2) Sales of securities are made only to qualified purchasers or  
36 other persons the issuer reasonably believes, after reasonable  
37 inquiry, to be qualified purchasers. A corporation, partnership, or  
38 other organization specifically formed for the purpose of acquiring  
39 the securities offered by the issuer in reliance upon this exemption  
40 may be a qualified purchaser if each of the equity owners of the

1 corporation, partnership, or other organization is a qualified  
2 purchaser. Qualified purchasers include the following:

3 (A) A person designated in Section 260.102.13 of Title 10 of  
4 the California Code of Regulations.

5 (B) A person designated in subdivision (i) or any rule of the  
6 commissioner adopted thereunder.

7 (C) A pension or profit-sharing trust of the issuer, a  
8 self-employed individual retirement plan, or an individual  
9 retirement account, if the investment decisions made on behalf of  
10 the trust, plan, or account are made solely by persons who are  
11 qualified purchasers.

12 (D) An organization described in Section 501(c)(3) of the  
13 Internal Revenue Code, corporation, Massachusetts or similar  
14 business trust, or partnership, each with total assets in excess of  
15 five million dollars (\$5,000,000) according to its most recent  
16 audited financial statements.

17 (E) With respect to the offer and sale of one class of voting  
18 common stock of an issuer or of preferred stock of an issuer  
19 entitling the holder thereof to at least the same voting rights as the  
20 issuer's one class of voting common stock, provided that the issuer  
21 has only one-class voting common stock outstanding upon  
22 consummation of the offer and sale, a natural person who, either  
23 individually or jointly with the person's spouse, (i) has a minimum  
24 net worth of two hundred fifty thousand dollars (\$250,000), and  
25 had, during the immediately preceding tax year, gross income in  
26 excess of one hundred thousand dollars (\$100,000) and reasonably  
27 expects gross income in excess of one hundred thousand dollars  
28 (\$100,000) during the current tax year or (ii) has a minimum net  
29 worth of five hundred thousand dollars (\$500,000). "Net worth"  
30 shall be determined exclusive of home, home furnishings, and  
31 automobiles. Other assets included in the computation of net worth  
32 may be valued at fair market value.

33 Each natural person specified above, by reason of his or her  
34 business or financial experience, or the business or financial  
35 experience of his or her professional adviser, who is unaffiliated  
36 with and who is not compensated, directly or indirectly, by the  
37 issuer or any affiliate or selling agent of the issuer, can be  
38 reasonably assumed to have the capacity to protect his or her  
39 interests in connection with the transaction. The amount of the  
40 investment of each natural person shall not exceed 10 percent of



1 the net worth, as determined by this subparagraph, of that natural  
2 person.

3 (F) Any other purchaser designated as qualified by rule of the  
4 commissioner.

5 (3) Each purchaser represents that the purchaser is purchasing  
6 for the purchaser's own account (or trust account, if the purchaser  
7 is a trustee) and not with a view to or for sale in connection with  
8 a distribution of the security.

9 (4) Each natural person purchaser, including a corporation,  
10 partnership, or other organization specifically formed by natural  
11 persons for the purpose of acquiring the securities offered by the  
12 issuer, receives, at least five business days before securities are  
13 sold to, or a commitment to purchase is accepted from, the  
14 purchaser, a written offering disclosure statement that shall meet  
15 the disclosure requirements of Regulation D (17 C.F.R. 230.501  
16 et seq.), and any other information as may be prescribed by rule  
17 of the commissioner, provided that the issuer shall not be obligated  
18 pursuant to this paragraph to provide this disclosure statement to  
19 a natural person qualified under Section 260.102.13 of Title 10 of  
20 the California Code of Regulations. The offer or sale of securities  
21 pursuant to a disclosure statement required by this paragraph that  
22 is in violation of Section 25401, or that fails to meet the disclosure  
23 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall  
24 not render unavailable to the issuer the claim of an exemption from  
25 Section 25110 afforded by this subdivision. This paragraph does  
26 not impose, directly or indirectly, any additional disclosure  
27 obligation with respect to any other exemption from qualification  
28 available under any other provision of this section.

29 (5) (A) A general announcement of proposed offering may be  
30 published by written document only, provided that the general  
31 announcement of proposed offering sets forth the following  
32 required information:

33 (i) The name of the issuer of the securities.

34 (ii) The full title of the security to be issued.

35 (iii) The anticipated suitability standards for prospective  
36 purchasers.

37 (iv) A statement that (I) no money or other consideration is  
38 being solicited or will be accepted, (II) an indication of interest  
39 made by a prospective purchaser involves no obligation or  
40 commitment of any kind, and, if the issuer is required by paragraph

1 (4) to deliver a disclosure statement to prospective purchasers,  
2 (III) no sales will be made or commitment to purchase accepted  
3 until five business days after delivery of a disclosure statement  
4 and subscription information to the prospective purchaser in  
5 accordance with the requirements of this subdivision.

6 (v) Any other information required by rule of the commissioner.

7 (vi) The following legend: "For more complete information  
8 about (Name of Issuer) and (Full Title of Security), send for  
9 additional information from (Name and Address) by sending this  
10 coupon or calling (Telephone Number)."

11 (B) The general announcement of proposed offering referred  
12 to in subparagraph (A) may also set forth the following  
13 information:

14 (i) A brief description of the business of the issuer.

15 (ii) The geographic location of the issuer and its business.

16 (iii) The price of the security to be issued, or, if the price is not  
17 known, the method of its determination or the probable price range  
18 as specified by the issuer, and the aggregate offering price.

19 (C) The general announcement of proposed offering shall  
20 contain only the information that is set forth in this paragraph.

21 (D) Dissemination of the general announcement of proposed  
22 offering to persons who are not qualified purchasers, without more,  
23 shall not disqualify the issuer from claiming the exemption under  
24 this subdivision.

25 (6) No telephone solicitation shall be permitted until the issuer  
26 has determined that the prospective purchaser to be solicited is a  
27 qualified purchaser.

28 (7) The issuer files a notice of transaction under this subdivision  
29 both (A) concurrent with the publication of a general announcement  
30 of proposed offering or at the time of the initial offer of the  
31 securities, whichever occurs first, accompanied by a filing fee, and  
32 (B) within 10 business days following the close or abandonment  
33 of the offering, but in no case more than 210 days from the date  
34 of filing the first notice. The first notice of transaction under  
35 subparagraph (A) shall contain an undertaking, in a form acceptable  
36 to the commissioner, to deliver any disclosure statement required  
37 by paragraph (4) to be delivered to prospective purchasers, and  
38 any supplement thereto, to the commissioner within 10 days of  
39 the commissioner's request for the information. The exemption  
40 from qualification afforded by this subdivision is unavailable if

1 an issuer fails to file the first notice required under subparagraph  
2 (A) or to pay the filing fee. The commissioner has the authority  
3 to assess an administrative penalty of up to one thousand dollars  
4 (\$1,000) against an issuer that fails to deliver the disclosure  
5 statement required to be delivered to the commissioner upon the  
6 commissioner's request within the time period set forth above.  
7 Neither the filing of the disclosure statement nor the failure by the  
8 commissioner to comment thereon precludes the commissioner  
9 from taking any action deemed necessary or appropriate under this  
10 division with respect to the offer and sale of the securities.

11 (o) An offer or sale of any security issued by a corporation or  
12 limited liability company pursuant to a purchase plan or agreement,  
13 or issued pursuant to an option plan or agreement, where the  
14 security at the time of issuance or grant is exempt from registration  
15 under the Securities Act of 1933, as amended, pursuant to Rule  
16 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions  
17 of which are hereby incorporated by reference into this section,  
18 provided that (1) the terms of any purchase plan or agreement shall  
19 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of  
20 Title 10 of the California Code of Regulations, (2) the terms of  
21 any option plan or agreement shall comply with Sections  
22 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the  
23 California Code of Regulations, and (3) the issuer files a notice of  
24 transaction in accordance with rules adopted by the commissioner  
25 no later than 30 days after the initial issuance of any security under  
26 that plan, accompanied by a filing fee as prescribed by subdivision  
27 (y) of Section 25608. The failure to file the notice of transaction  
28 within the time specified in this subdivision shall not affect the  
29 availability of this exemption. An issuer that fails to file the notice  
30 shall, within 15 business days after discovery of the failure to file  
31 the notice or after demand by the commissioner, whichever occurs  
32 first, file the notice and pay the commissioner a fee equal to the  
33 maximum aggregate fee payable had the transaction been qualified  
34 under Section 25110.

35 Offers and sales exempt pursuant to this subdivision shall be  
36 deemed to be part of a single, discrete offering and are not subject  
37 to integration with any other offering or sale, whether qualified  
38 under Chapter 2 (commencing with Section 25110), or otherwise  
39 exempt, or not subject to qualification.

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 (commencing with Section 28000) of Title 4), provided that all purchasers either (1) have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors, controlling persons, or managers (as appointed or elected by the members), or (2) by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction. All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer of the securities in the manner as the rule or order provides. The exemption under this subdivision shall not be available for any offering that is exempt or asserted to be exempt pursuant to Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11)) or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is conducted by means of any form of general solicitation or general advertising.

(q) Any offer or sale of any viatical or life settlement contract or fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(1) Sales of securities described in this subdivision are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser only if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.

(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

1 (C) A pension or profit-sharing trust of the issuer, a  
2 self-employed individual retirement plan, or an individual  
3 retirement account, if the investment decisions made on behalf of  
4 the trust, plan, or account are made solely by persons who are  
5 qualified purchasers.

6 (D) An organization described in Section 501(c)(3) of the  
7 Internal Revenue Code, corporation, Massachusetts or similar  
8 business trust, or partnership, each with total assets in excess of  
9 five million dollars (\$5,000,000) according to its most recent  
10 audited financial statements.

11 (E) A natural person who, either individually or jointly with the  
12 person's spouse, (i) has a minimum net worth of one hundred fifty  
13 thousand dollars (\$150,000) and had, during the immediately  
14 preceding tax year, gross income in excess of one hundred thousand  
15 dollars (\$100,000) and reasonably expects gross income in excess  
16 of one hundred thousand dollars (\$100,000) during the current tax  
17 year or (ii) has a minimum net worth of two hundred fifty thousand  
18 dollars (\$250,000). "Net worth" shall be determined exclusive of  
19 home, home furnishings, and automobiles. Other assets included  
20 in the computation of net worth may be valued at fair market value.

21 Each natural person specified above, by reason of his or her  
22 business or financial experience, or the business or financial  
23 experience of his or her professional adviser, who is unaffiliated  
24 with and who is not compensated, directly or indirectly, by the  
25 issuer or any affiliate or selling agent of the issuer, can be  
26 reasonably assumed to have the capacity to protect his or her  
27 interests in connection with the transaction.

28 The amount of the investment of each natural person shall not  
29 exceed 10 percent of the net worth, as determined by this  
30 subdivision, of that natural person.

31 (F) Any other purchaser designated as qualified by rule of the  
32 commissioner.

33 (2) Each purchaser represents that the purchaser is purchasing  
34 for the purchaser's own account (or trust account, if the purchaser  
35 is a trustee) and not with a view to or for sale in connection with  
36 a distribution of the security.

37 (3) Each natural person purchaser, including a corporation,  
38 partnership, or other organization specifically formed by natural  
39 persons for the purpose of acquiring the securities offered by the  
40 issuer, receives, at least five business days before securities

1 described in this subdivision are sold to, or a commitment to  
2 purchase is accepted from, the purchaser, the following information  
3 in writing:

4 (A) The name, principal business and mailing address, and  
5 telephone number of the issuer.

6 (B) The suitability standards for prospective purchasers as set  
7 forth in paragraph (1) of this subdivision.

8 (C) A description of the issuer's type of business organization  
9 and the state in which the issuer is organized or incorporated.

10 (D) A brief description of the business of the issuer.

11 (E) If the issuer retains ownership or becomes the beneficiary  
12 of the insurance policy, an audit report of an independent certified  
13 public accountant together with a balance sheet and related  
14 statements of income, retained earnings, and cashflows that reflect  
15 the issuer's financial position, the results of the issuer's operations,  
16 and the issuer's cashflows as of a date within 15 months before  
17 the date of the initial issuance of the securities described in this  
18 subdivision. The financial statements listed in this subparagraph  
19 shall be prepared in conformity with generally accepted accounting  
20 principles. If the date of the audit report is more than 120 days  
21 before the date of the initial issuance of the securities described  
22 in this subdivision, the issuer shall provide unaudited interim  
23 financial statements.

24 (F) The names of all directors, officers, partners, members, or  
25 trustees of the issuer.

26 (G) A description of any order, judgment, or decree that is final  
27 as to the issuing entity of any state, federal, or foreign country  
28 governmental agency or administrator, or of any state, federal, or  
29 foreign country court of competent jurisdiction (i) revoking,  
30 suspending, denying, or censuring for cause any license, permit,  
31 or other authority of the issuer or of any director, officer, partner,  
32 member, trustee, or person owning or controlling, directly or  
33 indirectly, 10 percent or more of the outstanding interest or equity  
34 securities of the issuer, to engage in the securities, commodities,  
35 franchise, insurance, real estate, or lending business or in the offer  
36 or sale of securities, commodities, franchises, insurance, real estate,  
37 or loans; (ii) permanently restraining, enjoining, barring,  
38 suspending, or censuring any such person from engaging in or  
39 continuing any conduct, practice, or employment in connection  
40 with the offer or sale of securities, commodities, franchises,

1 insurance, real estate, or loans; (iii) convicting any such person  
2 of, or pleading nolo contendere by any such person to, any felony  
3 or misdemeanor involving a security, commodity, franchise,  
4 insurance, real estate, or loan, or any aspect of the securities,  
5 commodities, franchise, insurance, real estate, or lending business,  
6 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
7 conversion, or misappropriation of property; or (iv) holding any  
8 such person liable in a civil action involving breach of a fiduciary  
9 duty, fraud, deceit, embezzlement, fraudulent conversion, or  
10 misappropriation of property. This subparagraph does not apply  
11 to any order, judgment, or decree that has been vacated, overturned,  
12 or is more than 10 years old.

13 (H) Notice of the purchaser's right to rescind or cancel the  
14 investment and receive a refund pursuant to Section 25508.5.

15 (I) The name, address, and telephone number of the issuing  
16 insurance company, and the name, address, and telephone number  
17 of the state or foreign country regulator of the insurance company.

18 (J) The total face value of the insurance policy and the  
19 percentage of the insurance policy the purchaser will own.

20 (K) The insurance policy number, issue date, and type.

21 (L) If a group insurance policy, the name, address, and telephone  
22 number of the group, and, if applicable, the material terms and  
23 conditions of converting the policy to an individual policy,  
24 including the amount of increased premiums.

25 (M) If a term insurance policy, the term and the name, address,  
26 and telephone number of the person who will be responsible for  
27 renewing the policy if necessary.

28 (N) That the insurance policy is beyond the state statute for  
29 contestability and the reason therefor.

30 (O) The insurance policy premiums and terms of premium  
31 payments.

32 (P) The amount of the purchaser's moneys that will be set aside  
33 to pay premiums.

34 (Q) The name, address, and telephone number of the person  
35 who will be the insurance policy owner and the person who will  
36 be responsible for paying premiums.

37 (R) The date on which the purchaser will be required to pay  
38 premiums and the amount of the premium, if known.

39 (S) A statement to the effect that any projected rate of return to  
40 the purchaser from the purchase of a viatical or life settlement

1 contract or a fractionalized or pooled interest therein is based on  
2 an estimated life expectancy for the person insured under the life  
3 insurance policy; that the return on the purchase may vary  
4 substantially from the expected rate of return based upon the actual  
5 life expectancy of the insured that may be less than, equal to, or  
6 may greatly exceed the estimated life expectancy; and that the rate  
7 of return would be higher if the actual life expectancy were less  
8 than, and lower if the actual life expectancy were greater than, the  
9 estimated life expectancy of the insured at the time the viatical or  
10 life settlement contract was closed.

11 (T) A statement that the purchaser should consult with his or  
12 her tax adviser regarding the tax consequences of the purchase of  
13 the viatical or life settlement contract or fractionalized or pooled  
14 interest therein and, if the purchaser is using retirement funds or  
15 accounts for that purchase, whether or not any adverse tax  
16 consequences might result from the use of those funds for the  
17 purchase of that investment.

18 (U) Any other information as may be prescribed by rule of the  
19 commissioner.

20 (r) This section shall become operative on January 1, 2016.

21 *SEC. 2.5. Section 25102 is added to the Corporations Code,*  
22 *to read:*

23 *25102. The following transactions are exempted from the*  
24 *provisions of Section 25110:*

25 *(a) Any offer (but not a sale) not involving any public offering*  
26 *and the execution and delivery of any agreement for the sale of*  
27 *securities pursuant to the offer if (1) the agreement contains*  
28 *substantially the following provision: "The sale of the securities*  
29 *that are the subject of this agreement has not been qualified with*  
30 *the Commissioner of Corporations of the State of California and*  
31 *the issuance of the securities or the payment or receipt of any part*  
32 *of the consideration therefor prior to the qualification is unlawful,*  
33 *unless the sale of securities is exempt from the qualification by*  
34 *Section 25100, 25102, or 25105 of the California Corporations*  
35 *Code. The rights of all parties to this agreement are expressly*  
36 *conditioned upon the qualification being obtained, unless the sale*  
37 *is so exempt"; and (2) no part of the purchase price is paid or*  
38 *received and none of the securities are issued until the sale of the*  
39 *securities is qualified under this law unless the sale of securities*



1 *is exempt from the qualification by this section, Section 25100, or*  
2 *25105.*

3 *(b) Any offer (but not a sale) of a security for which a*  
4 *registration statement has been filed under the Securities Act of*  
5 *1933 but has not yet become effective, or for which an offering*  
6 *statement under Regulation A has been filed but has not yet been*  
7 *qualified, if no stop order or refusal order is in effect and no public*  
8 *proceeding or examination looking toward an order is pending*  
9 *under Section 8 of the act and no order under Section 25140 or*  
10 *subdivision (a) of Section 25143 is in effect under this law.*

11 *(c) Any offer (but not a sale) and the execution and delivery of*  
12 *any agreement for the sale of securities pursuant to the offer as*  
13 *may be permitted by the commissioner upon application. Any*  
14 *negotiating permit under this subdivision shall be conditioned to*  
15 *the effect that none of the securities may be issued and none of the*  
16 *consideration therefor may be received or accepted until the sale*  
17 *of the securities is qualified under this law.*

18 *(d) Any transaction or agreement between the issuer and an*  
19 *underwriter or among underwriters if the sale of the securities is*  
20 *qualified, or exempt from qualification, at the time of distribution*  
21 *thereof in this state, if any.*

22 *(e) Any offer or sale of any evidence of indebtedness, whether*  
23 *secured or unsecured, and any guarantee thereof, in a transaction*  
24 *not involving any public offering.*

25 *(f) Any offer or sale of any security in a transaction (other than*  
26 *an offer or sale to a pension or profit-sharing trust of the issuer)*  
27 *that meets each of the following criteria:*

28 *(1) Sales of the security are not made to more than 35 persons,*  
29 *including persons not in this state.*

30 *(2) All purchasers either have a preexisting personal or business*  
31 *relationship with the offeror or any of its partners, officers,*  
32 *directors or controlling persons, or managers (as appointed or*  
33 *elected by the members) if the offeror is a limited liability company,*  
34 *or by reason of their business or financial experience or the*  
35 *business or financial experience of their professional advisers who*  
36 *are unaffiliated with and who are not compensated by the issuer*  
37 *or any affiliate or selling agent of the issuer, directly or indirectly,*  
38 *could be reasonably assumed to have the capacity to protect their*  
39 *own interests in connection with the transaction.*

1     (3) *Each purchaser represents that the purchaser is purchasing*  
2 *for the purchaser's own account (or a trust account if the*  
3 *purchaser is a trustee) and not with a view to or for sale in*  
4 *connection with any distribution of the security.*

5     (4) *The offer and sale of the security is not accomplished by the*  
6 *publication of any advertisement. The number of purchasers*  
7 *referred to above is exclusive of any described in subdivision (i),*  
8 *any officer, director, or affiliate of the issuer, or manager (as*  
9 *appointed or elected by the members) if the issuer is a limited*  
10 *liability company, and any other purchaser who the commissioner*  
11 *designates by rule. For purposes of this section, a husband and*  
12 *wife (together with any custodian or trustee acting for the account*  
13 *of their minor children) are counted as one person and a*  
14 *partnership, corporation, or other organization that was not*  
15 *specifically formed for the purpose of purchasing the security*  
16 *offered in reliance upon this exemption, is counted as one person.*  
17 *The commissioner shall by rule require the issuer to file a notice*  
18 *of transactions under this subdivision.*

19     *The failure to file the notice or the failure to file the notice within*  
20 *the time specified by the rule of the commissioner shall not affect*  
21 *the availability of the exemption. Any issuer that fails to file the*  
22 *notice as provided by rule of the commissioner shall, within 15*  
23 *business days after discovery of the failure to file the notice or*  
24 *after demand by the commissioner, whichever occurs first, file the*  
25 *notice and pay to the commissioner a fee equal to the fee payable*  
26 *had the transaction been qualified under Section 25110. Neither*  
27 *the filing of the notice nor the failure by the commissioner to*  
28 *comment thereon precludes the commissioner from taking any*  
29 *action that the commissioner deems necessary or appropriate*  
30 *under this division with respect to the offer and sale of the*  
31 *securities.*

32     (g) *Any offer or sale of conditional sale agreements, equipment*  
33 *trust certificates, or certificates of interest or participation therein*  
34 *or partial assignments thereof, covering the purchase of railroad*  
35 *rolling stock or equipment or the purchase of motor vehicles,*  
36 *aircraft, or parts thereof, in a transaction not involving any public*  
37 *offering.*

38     (h) *Any offer or sale of voting common stock by a corporation*  
39 *incorporated in any state if, immediately after the proposed sale*  
40 *and issuance, there will be only one class of stock of the*

1 corporation outstanding that is owned beneficially by no more  
2 than 35 persons, provided all of the following requirements have  
3 been met:

4 (1) The offer and sale of the stock is not accompanied by the  
5 publication of any advertisement, and no selling expenses have  
6 been given, paid, or incurred in connection therewith.

7 (2) The consideration to be received by the issuer for the stock  
8 to be issued consists of any of the following:

9 (A) Only assets (which may include cash) of an existing business  
10 enterprise transferred to the issuer upon its initial organization,  
11 of which all of the persons who are to receive the stock to be issued  
12 pursuant to this exemption were owners during, and the enterprise  
13 was operated for, a period of not less than one year immediately  
14 preceding the proposed issuance, and the ownership of the  
15 enterprise immediately prior to the proposed issuance was in the  
16 same proportions as the shares of stock are to be issued.

17 (B) Only cash or cancellation of indebtedness for money  
18 borrowed, or both, upon the initial organization of the issuer;  
19 provided all of the stock is issued for the same price per share.

20 (C) Only cash, provided the sale is approved in writing by each  
21 of the existing shareholders and the purchaser or purchasers are  
22 existing shareholders.

23 (D) In a case where after the proposed issuance there will be  
24 only one owner of the stock of the issuer, only any legal  
25 consideration.

26 (3) No promotional consideration has been given, paid, or  
27 incurred in connection with the issuance. Promotional  
28 consideration means any consideration paid directly or indirectly  
29 to a person who, acting alone or in conjunction with one or more  
30 other persons, takes the initiative in founding and organizing the  
31 business or enterprise of an issuer for services rendered in  
32 connection with the founding or organizing.

33 (4) A notice in a form prescribed by rule of the commissioner,  
34 signed by an active member of the State Bar of California, is filed  
35 with or mailed for filing to the commissioner not later than 10  
36 business days after receipt of consideration for the securities by  
37 the issuer. That notice shall contain an opinion of the member of  
38 the State Bar of California that the exemption provided by this  
39 subdivision is available for the offer and sale of the securities. The  
40 failure to file the notice as required by this subdivision and the

1 rules of the commissioner shall not affect the availability of this  
2 exemption. An issuer who fails to file the notice within the time  
3 specified by this subdivision shall, within 15 business days after  
4 discovery of the failure to file the notice or after demand by the  
5 commissioner, whichever occurs first, file the notice and pay to  
6 the commissioner a fee equal to the fee payable had the transaction  
7 been qualified under Section 25110. The notice, except when filed  
8 on behalf of a California corporation, shall be accompanied by  
9 an irrevocable consent, in the form that the commissioner by rule  
10 prescribes, appointing the commissioner or his or her successor  
11 in office to be the issuer's attorney to receive service of any lawful  
12 process in any noncriminal suit, action, or proceeding against it  
13 or its successor that arises under this law or any rule or order  
14 hereunder after the consent has been filed, with the same force  
15 and validity as if served personally on the issuer. An issuer on  
16 whose behalf a consent has been filed in connection with a previous  
17 qualification or exemption from qualification under this law (or  
18 application for a permit under any prior law if the application or  
19 notice under this law states that the consent is still effective) need  
20 not file another. Service may be made by leaving a copy of the  
21 process in the office of the commissioner, but it is not effective  
22 unless (A) the plaintiff, who may be the commissioner in a suit,  
23 action, or proceeding instituted by him or her, forthwith sends  
24 notice of the service and a copy of the process by registered or  
25 certified mail to the defendant or respondent at its last address on  
26 file with the commissioner, and (B) the plaintiff's affidavit of  
27 compliance with this section is filed in the case on or before the  
28 return day of the process, if any, or within the further time as the  
29 court allows.

30 (5) Each purchaser represents that the purchaser is purchasing  
31 for the purchaser's own account, or a trust account if the purchaser  
32 is a trustee, and not with a view to or for sale in connection with  
33 any distribution of the stock.

34 For the purposes of this subdivision, all securities held by a  
35 husband and wife, whether or not jointly, shall be considered to  
36 be owned by one person, and all securities held by a corporation  
37 that has issued stock pursuant to this exemption shall be considered  
38 to be held by the shareholders to whom it has issued the stock.

39 All stock issued by a corporation pursuant to this subdivision  
40 as it existed prior to the effective date of the amendments to this

1 *section made during the 1996 portion of the 1995–96 Regular*  
 2 *Session that required the issuer to have stamped or printed*  
 3 *prominently on the face of the stock certificate a legend in a form*  
 4 *prescribed by rule of the commissioner restricting transfer of the*  
 5 *stock in a manner provided for by that rule shall not be subject to*  
 6 *the transfer restriction legend requirement and, by operation of*  
 7 *law, the corporation is authorized to remove that transfer*  
 8 *restriction legend from the certificates of those shares of stock*  
 9 *issued by the corporation pursuant to this subdivision as it existed*  
 10 *prior to the effective date of the amendments to this section made*  
 11 *during the 1996 portion of the 1995–96 Regular Session.*

12 *(i) Any offer or sale (1) to a bank, savings and loan association,*  
 13 *trust company, insurance company, investment company registered*  
 14 *under the Investment Company Act of 1940, pension or*  
 15 *profit-sharing trust (other than a pension or profit-sharing trust*  
 16 *of the issuer, a self-employed individual retirement plan, or*  
 17 *individual retirement account), or other institutional investor or*  
 18 *governmental agency or instrumentality that the commissioner*  
 19 *may designate by rule, whether the purchaser is acting for itself*  
 20 *or as trustee, or (2) to any corporation with outstanding securities*  
 21 *registered under Section 12 of the Securities Exchange Act of 1934*  
 22 *or any wholly owned subsidiary of the corporation that after the*  
 23 *offer and sale will own directly or indirectly 100 percent of the*  
 24 *outstanding capital stock of the issuer, provided the purchaser*  
 25 *represents that it is purchasing for its own account (or for the trust*  
 26 *account) for investment and not with a view to or for sale in*  
 27 *connection with any distribution of the security.*

28 *(j) Any offer or sale of any certificate of interest or participation*  
 29 *in an oil or gas title or lease (including subsurface gas storage*  
 30 *and payments out of production) if either of the following apply:*

31 *(1) All of the purchasers meet one of the following requirements:*

32 *(A) Are and have been during the preceding two years engaged*  
 33 *primarily in the business of drilling for, producing, or refining oil*  
 34 *or gas (or whose corporate predecessor, in the case of a*  
 35 *corporation, has been so engaged).*

36 *(B) Are persons described in paragraph (1) of subdivision (i).*

37 *(C) Have been found by the commissioner upon written*  
 38 *application to be substantially engaged in the business of drilling*  
 39 *for, producing, or refining oil or gas so as not to require the*

1 *protection provided by this law (which finding shall be effective*  
2 *until rescinded).*

3 *(2) The security is concurrently hypothecated to a bank in the*  
4 *ordinary course of business to secure a loan made by the bank,*  
5 *provided that each purchaser represents that it is purchasing for*  
6 *its own account for investment and not with a view to or for sale*  
7 *in connection with any distribution of the security.*

8 *(k) Any offer or sale of any security under, or pursuant to, a*  
9 *plan of reorganization under Chapter 11 of the federal bankruptcy*  
10 *law that has been confirmed or is subject to confirmation by the*  
11 *decree or order of a court of competent jurisdiction.*

12 *(l) Any offer or sale of an option, warrant, put, call, or straddle,*  
13 *and any guarantee of any of these securities, by a person who is*  
14 *not the issuer of the security subject to the right, if the transaction,*  
15 *had it involved an offer or sale of the security subject to the right*  
16 *by the person, would not have violated Section 25110 or 25130.*

17 *(m) Any offer or sale of a stock to a pension, profit-sharing,*  
18 *stock bonus, or employee stock ownership plan, provided that (1)*  
19 *the plan meets the requirements for qualification under Section*  
20 *401 of the Internal Revenue Code, and (2) the employees are not*  
21 *required or permitted individually to make any contributions to*  
22 *the plan. The exemption provided by this subdivision shall not be*  
23 *affected by whether the stock is contributed to the plan, purchased*  
24 *from the issuer with contributions by the issuer or an affiliate of*  
25 *the issuer; or purchased from the issuer with funds borrowed from*  
26 *the issuer, an affiliate of the issuer, or any other lender.*

27 *(n) Any offer or sale of any security in a transaction, other than*  
28 *an offer or sale of a security in a rollup transaction, that meets all*  
29 *of the following criteria:*

30 *(1) The issuer is (A) a California corporation or foreign*  
31 *corporation that, at the time of the filing of the notice required*  
32 *under this subdivision, is subject to Section 2115, or (B) any other*  
33 *form of business entity, including without limitation a partnership*  
34 *or trust organized under the laws of this state. The exemption*  
35 *provided by this subdivision is not available to a “blind pool”*  
36 *issuer, as that term is defined by the commissioner, or to an*  
37 *investment company subject to the Investment Company Act of*  
38 *1940.*

39 *(2) Sales of securities are made only to qualified purchasers or*  
40 *other persons the issuer reasonably believes, after reasonable*

1 *inquiry, to be qualified purchasers. A corporation, partnership,*  
2 *or other organization specifically formed for the purpose of*  
3 *acquiring the securities offered by the issuer in reliance upon this*  
4 *exemption may be a qualified purchaser if each of the equity*  
5 *owners of the corporation, partnership, or other organization is*  
6 *a qualified purchaser. Qualified purchasers include the following:*

7 (A) *A person designated in Section 260.102.13 of Title 10 of the*  
8 *California Code of Regulations.*

9 (B) *A person designated in subdivision (i) or any rule of the*  
10 *commissioner adopted thereunder.*

11 (C) *A pension or profit-sharing trust of the issuer, a*  
12 *self-employed individual retirement plan, or an individual*  
13 *retirement account, if the investment decisions made on behalf of*  
14 *the trust, plan, or account are made solely by persons who are*  
15 *qualified purchasers.*

16 (D) *An organization described in Section 501(c)(3) of the*  
17 *Internal Revenue Code, corporation, Massachusetts or similar*  
18 *business trust, or partnership, each with total assets in excess of*  
19 *five million dollars (\$5,000,000) according to its most recent*  
20 *audited financial statements.*

21 (E) *With respect to the offer and sale of one class of voting*  
22 *common stock of an issuer or of preferred stock of an issuer*  
23 *entitling the holder thereof to at least the same voting rights as*  
24 *the issuer's one class of voting common stock, provided that the*  
25 *issuer has only one-class voting common stock outstanding upon*  
26 *consummation of the offer and sale, a natural person who, either*  
27 *individually or jointly with the person's spouse, (i) has a minimum*  
28 *net worth of two hundred fifty thousand dollars (\$250,000) and*  
29 *had, during the immediately preceding tax year, gross income in*  
30 *excess of one hundred thousand dollars (\$100,000) and reasonably*  
31 *expects gross income in excess of one hundred thousand dollars*  
32 *(\$100,000) during the current tax year or (ii) has a minimum net*  
33 *worth of five hundred thousand dollars (\$500,000). "Net worth"*  
34 *shall be determined exclusive of home, home furnishings, and*  
35 *automobiles. Other assets included in the computation of net worth*  
36 *may be valued at fair market value.*

37 *Each natural person specified above, by reason of his or her*  
38 *business or financial experience, or the business or financial*  
39 *experience of his or her professional adviser, who is unaffiliated*  
40 *with and who is not compensated, directly or indirectly, by the*

1 issuer or any affiliate or selling agent of the issuer, can be  
2 reasonably assumed to have the capacity to protect his or her  
3 interests in connection with the transaction. The amount of the  
4 investment of each natural person shall not exceed 10 percent of  
5 the net worth, as determined by this subparagraph, of that natural  
6 person.

7 (F) Any other purchaser designated as qualified by rule of the  
8 commissioner.

9 (3) Each purchaser represents that the purchaser is purchasing  
10 for the purchaser's own account (or trust account, if the purchaser  
11 is a trustee) and not with a view to or for sale in connection with  
12 a distribution of the security.

13 (4) Each natural person purchaser, including a corporation,  
14 partnership, or other organization specifically formed by natural  
15 persons for the purpose of acquiring the securities offered by the  
16 issuer, receives, at least five business days before securities are  
17 sold to, or a commitment to purchase is accepted from, the  
18 purchaser, a written offering disclosure statement that shall meet  
19 the disclosure requirements of Regulation D (17 C.F.R. 230.501  
20 et seq.), and any other information as may be prescribed by rule  
21 of the commissioner, provided that the issuer shall not be obligated  
22 pursuant to this paragraph to provide this disclosure statement to  
23 a natural person qualified under Section 260.102.13 of Title 10  
24 of the California Code of Regulations. The offer or sale of  
25 securities pursuant to a disclosure statement required by this  
26 paragraph that is in violation of Section 25401, or that fails to  
27 meet the disclosure requirements of Regulation D (17 C.F.R.  
28 230.501 et seq.), shall not render unavailable to the issuer the  
29 claim of an exemption from Section 25110 afforded by this  
30 subdivision. This paragraph does not impose, directly or indirectly,  
31 any additional disclosure obligation with respect to any other  
32 exemption from qualification available under any other provision  
33 of this section.

34 (5) (A) A general announcement of proposed offering may be  
35 published by written document only, provided that the general  
36 announcement of proposed offering sets forth the following  
37 required information:

38 (i) The name of the issuer of the securities.

39 (ii) The full title of the security to be issued.



1     (iii) *The anticipated suitability standards for prospective*  
2 *purchasers.*

3     (iv) *A statement that (I) no money or other consideration is*  
4 *being solicited or will be accepted, (II) an indication of interest*  
5 *made by a prospective purchaser involves no obligation or*  
6 *commitment of any kind, and, if the issuer is required by paragraph*  
7 *(4) to deliver a disclosure statement to prospective purchasers,*  
8 *(III) no sales will be made or commitment to purchase accepted*  
9 *until five business days after delivery of a disclosure statement*  
10 *and subscription information to the prospective purchaser in*  
11 *accordance with the requirements of this subdivision.*

12     (v) *Any other information required by rule of the commissioner.*

13     (vi) *The following legend: "For more complete information*  
14 *about (Name of Issuer) and (Full Title of Security), send for*  
15 *additional information from (Name and Address) by sending this*  
16 *coupon or calling (Telephone Number)."*

17     (B) *The general announcement of proposed offering referred*  
18 *to in subparagraph (A) may also set forth the following*  
19 *information:*

20         (i) *A brief description of the business of the issuer.*

21         (ii) *The geographic location of the issuer and its business.*

22         (iii) *The price of the security to be issued, or, if the price is not*  
23 *known, the method of its determination or the probable price range*  
24 *as specified by the issuer, and the aggregate offering price.*

25     (C) *The general announcement of proposed offering shall*  
26 *contain only the information that is set forth in this paragraph.*

27     (D) *Dissemination of the general announcement of proposed*  
28 *offering to persons who are not qualified purchasers, without more,*  
29 *shall not disqualify the issuer from claiming the exemption under*  
30 *this subdivision.*

31     (6) *No telephone solicitation shall be permitted until the issuer*  
32 *has determined that the prospective purchaser to be solicited is a*  
33 *qualified purchaser.*

34     (7) *The issuer files a notice of transaction under this subdivision*  
35 *both (A) concurrent with the publication of a general*  
36 *announcement of proposed offering or at the time of the initial*  
37 *offer of the securities, whichever occurs first, accompanied by a*  
38 *filing fee, and (B) within 10 business days following the close or*  
39 *abandonment of the offering, but in no case more than 210 days*  
40 *from the date of filing the first notice. The first notice of transaction*

1 under subparagraph (A) shall contain an undertaking, in a form  
2 acceptable to the commissioner, to deliver any disclosure statement  
3 required by paragraph (4) to be delivered to prospective  
4 purchasers, and any supplement thereto, to the commissioner  
5 within 10 days of the commissioner's request for the information.  
6 The exemption from qualification afforded by this subdivision is  
7 unavailable if an issuer fails to file the first notice required under  
8 subparagraph (A) or to pay the filing fee. The commissioner has  
9 the authority to assess an administrative penalty of up to one  
10 thousand dollars (\$1,000) against an issuer that fails to deliver  
11 the disclosure statement required to be delivered to the  
12 commissioner upon the commissioner's request within the time  
13 period set forth above. Neither the filing of the disclosure statement  
14 nor the failure by the commissioner to comment thereon precludes  
15 the commissioner from taking any action deemed necessary or  
16 appropriate under this division with respect to the offer and sale  
17 of the securities.

18 (o) An offer or sale of any security issued by a corporation or  
19 limited liability company pursuant to a purchase plan or  
20 agreement, or issued pursuant to an option plan or agreement,  
21 where the security at the time of issuance or grant is exempt from  
22 registration under the Securities Act of 1933, as amended, pursuant  
23 to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the  
24 provisions of which are hereby incorporated by reference into this  
25 section, provided that (1) the terms of any purchase plan or  
26 agreement shall comply with Sections 260.140.42, 260.140.45,  
27 and 260.140.46 of Title 10 of the California Code of Regulations,  
28 (2) the terms of any option plan or agreement shall comply with  
29 Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of  
30 the California Code of Regulations, and (3) the issuer files a notice  
31 of transaction in accordance with rules adopted by the  
32 commissioner no later than 30 days after the initial issuance of  
33 any security under that plan, accompanied by a filing fee as  
34 prescribed by subdivision (y) of Section 25608. The failure to file  
35 the notice of transaction within the time specified in this subdivision  
36 shall not affect the availability of this exemption. An issuer that  
37 fails to file the notice shall, within 15 business days after discovery  
38 of the failure to file the notice or after demand by the  
39 commissioner, whichever occurs first, file the notice and pay the

1 commissioner a fee equal to the maximum aggregate fee payable  
2 had the transaction been qualified under Section 25110.

3 Offers and sales exempt pursuant to this subdivision shall be  
4 deemed to be part of a single, discrete offering and are not subject  
5 to integration with any other offering or sale, whether qualified  
6 under Chapter 2 (commencing with Section 25110), or otherwise  
7 exempt, or not subject to qualification.

8 (p) An offer or sale of nonredeemable securities to accredited  
9 investors (Section 28031) by a person licensed under the Capital  
10 Access Company Law (Division 3 (commencing with Section  
11 28000) of Title 4), provided that all purchasers either (1) have a  
12 preexisting personal or business relationship with the offeror or  
13 any of its partners, officers, directors, controlling persons, or  
14 managers (as appointed or elected by the members), or (2) by  
15 reason of their business or financial experience or the business or  
16 financial experience of their professional advisers who are  
17 unaffiliated with and who are not compensated by the issuer or  
18 any affiliate or selling agent of the issuer, directly or indirectly,  
19 could be reasonably assumed to have the capacity to protect their  
20 own interests in connection with the transaction. All  
21 nonredeemable securities shall be evidenced by certificates that  
22 shall have stamped or printed prominently on their face a legend  
23 in a form to be prescribed by rule or order of the commissioner  
24 restricting transfer of the securities in the manner as the rule or  
25 order provides. The exemption under this subdivision shall not be  
26 available for any offering that is exempt or asserted to be exempt  
27 pursuant to Section 3(a)(11) of the Securities Act of 1933 (15  
28 U.S.C. Sec. 77c(a)(11)) or Rule 147 (17 C.F.R. 230.147)  
29 thereunder or otherwise is conducted by means of any form of  
30 general solicitation or general advertising.

31 (q) Any offer or sale of any viatical or life settlement contract  
32 or fractionalized or pooled interest therein in a transaction that  
33 meets all of the following criteria:

34 (1) Sales of securities described in this subdivision are made  
35 only to qualified purchasers or other persons the issuer reasonably  
36 believes, after reasonable inquiry, to be qualified purchasers. A  
37 corporation, partnership, or other organization specifically formed  
38 for the purpose of acquiring the securities offered by the issuer in  
39 reliance upon this exemption may be a qualified purchaser only  
40 if each of the equity owners of the corporation, partnership, or

1 *other organization is a qualified purchaser. Qualified purchasers*  
2 *include the following:*

3 (A) *A person designated in Section 260.102.13 of Title 10 of the*  
4 *California Code of Regulations.*

5 (B) *A person designated in subdivision (i) or any rule of the*  
6 *commissioner adopted thereunder.*

7 (C) *A pension or profit-sharing trust of the issuer, a*  
8 *self-employed individual retirement plan, or an individual*  
9 *retirement account, if the investment decisions made on behalf of*  
10 *the trust, plan, or account are made solely by persons who are*  
11 *qualified purchasers.*

12 (D) *An organization described in Section 501(c)(3) of the*  
13 *Internal Revenue Code, corporation, Massachusetts or similar*  
14 *business trust, or partnership, each with total assets in excess of*  
15 *five million dollars (\$5,000,000) according to its most recent*  
16 *audited financial statements.*

17 (E) *A natural person who, either individually or jointly with the*  
18 *person's spouse, (i) has a minimum net worth of one hundred fifty*  
19 *thousand dollars (\$150,000) and had, during the immediately*  
20 *preceding tax year, gross income in excess of one hundred*  
21 *thousand dollars (\$100,000) and reasonably expects gross income*  
22 *in excess of one hundred thousand dollars (\$100,000) during the*  
23 *current tax year or (ii) has a minimum net worth of two hundred*  
24 *fifty thousand dollars (\$250,000). "Net worth" shall be determined*  
25 *exclusive of home, home furnishings, and automobiles. Other assets*  
26 *included in the computation of net worth may be valued at fair*  
27 *market value.*

28 *Each natural person specified above, by reason of his or her*  
29 *business or financial experience, or the business or financial*  
30 *experience of his or her professional adviser, who is unaffiliated*  
31 *with and who is not compensated, directly or indirectly, by the*  
32 *issuer or any affiliate or selling agent of the issuer, can be*  
33 *reasonably assumed to have the capacity to protect his or her*  
34 *interests in connection with the transaction.*

35 *The amount of the investment of each natural person shall not*  
36 *exceed 10 percent of the net worth, as determined by this*  
37 *subdivision, of that natural person.*

38 (F) *Any other purchaser designated as qualified by rule of the*  
39 *commissioner.*

1     (2) *Each purchaser represents that the purchaser is purchasing*  
2 *for the purchaser's own account (or trust account, if the purchaser*  
3 *is a trustee) and not with a view to or for sale in connection with*  
4 *a distribution of the security.*

5     (3) *Each natural person purchaser, including a corporation,*  
6 *partnership, or other organization specifically formed by natural*  
7 *persons for the purpose of acquiring the securities offered by the*  
8 *issuer, receives, at least five business days before securities*  
9 *described in this subdivision are sold to, or a commitment to*  
10 *purchase is accepted from, the purchaser, the following information*  
11 *in writing:*

12     (A) *The name, principal business and mailing address, and*  
13 *telephone number of the issuer.*

14     (B) *The suitability standards for prospective purchasers as set*  
15 *forth in paragraph (1) of this subdivision.*

16     (C) *A description of the issuer's type of business organization*  
17 *and the state in which the issuer is organized or incorporated.*

18     (D) *A brief description of the business of the issuer.*

19     (E) *If the issuer retains ownership or becomes the beneficiary*  
20 *of the insurance policy, an audit report of an independent certified*  
21 *public accountant together with a balance sheet and related*  
22 *statements of income, retained earnings, and cashflows that reflect*  
23 *the issuer's financial position, the results of the issuer's operations,*  
24 *and the issuer's cashflows as of a date within 15 months before*  
25 *the date of the initial issuance of the securities described in this*  
26 *subdivision. The financial statements listed in this subparagraph*  
27 *shall be prepared in conformity with generally accepted accounting*  
28 *principles. If the date of the audit report is more than 120 days*  
29 *before the date of the initial issuance of the securities described*  
30 *in this subdivision, the issuer shall provide unaudited interim*  
31 *financial statements.*

32     (F) *The names of all directors, officers, partners, members, or*  
33 *trustees of the issuer.*

34     (G) *A description of any order, judgment, or decree that is final*  
35 *as to the issuing entity of any state, federal, or foreign country*  
36 *governmental agency or administrator, or of any state, federal, or*  
37 *foreign country court of competent jurisdiction (i) revoking,*  
38 *suspending, denying, or censuring for cause any license, permit,*  
39 *or other authority of the issuer or of any director, officer, partner,*  
40 *member, trustee, or person owning or controlling, directly or*

1 indirectly, 10 percent or more of the outstanding interest or equity  
2 securities of the issuer, to engage in the securities, commodities,  
3 franchise, insurance, real estate, or lending business or in the offer  
4 or sale of securities, commodities, franchises, insurance, real  
5 estate, or loans; (ii) permanently restraining, enjoining, barring,  
6 suspending, or censuring any such person from engaging in or  
7 continuing any conduct, practice, or employment in connection  
8 with the offer or sale of securities, commodities, franchises,  
9 insurance, real estate, or loans; (iii) convicting any such person  
10 of, or pleading nolo contendere by any such person to, any felony  
11 or misdemeanor involving a security, commodity, franchise,  
12 insurance, real estate, or loan, or any aspect of the securities,  
13 commodities, franchise, insurance, real estate, or lending business,  
14 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
15 conversion, or misappropriation of property; or (iv) holding any  
16 such person liable in a civil action involving breach of a fiduciary  
17 duty, fraud, deceit, embezzlement, fraudulent conversion, or  
18 misappropriation of property. This subparagraph does not apply  
19 to any order, judgment, or decree that has been vacated,  
20 overturned, or is more than 10 years old.

21 (H) Notice of the purchaser's right to rescind or cancel the  
22 investment and receive a refund pursuant to Section 25508.5.

23 (I) The name, address, and telephone number of the issuing  
24 insurance company, and the name, address, and telephone number  
25 of the state or foreign country regulator of the insurance company.

26 (J) The total face value of the insurance policy and the  
27 percentage of the insurance policy the purchaser will own.

28 (K) The insurance policy number, issue date, and type.

29 (L) If a group insurance policy, the name, address, and  
30 telephone number of the group, and, if applicable, the material  
31 terms and conditions of converting the policy to an individual  
32 policy, including the amount of increased premiums.

33 (M) If a term insurance policy, the term and the name, address,  
34 and telephone number of the person who will be responsible for  
35 renewing the policy if necessary.

36 (N) That the insurance policy is beyond the state statute for  
37 contestability and the reason therefor.

38 (O) The insurance policy premiums and terms of premium  
39 payments.

1     (P) *The amount of the purchaser's moneys that will be set aside*  
2 *to pay premiums.*

3     (Q) *The name, address, and telephone number of the person*  
4 *who will be the insurance policy owner and the person who will*  
5 *be responsible for paying premiums.*

6     (R) *The date on which the purchaser will be required to pay*  
7 *premiums and the amount of the premium, if known.*

8     (S) *A statement to the effect that any projected rate of return to*  
9 *the purchaser from the purchase of a viatical or life settlement*  
10 *contract or a fractionalized or pooled interest therein is based on*  
11 *an estimated life expectancy for the person insured under the life*  
12 *insurance policy; that the return on the purchase may vary*  
13 *substantially from the expected rate of return based upon the actual*  
14 *life expectancy of the insured that may be less than, equal to, or*  
15 *may greatly exceed the estimated life expectancy; and that the rate*  
16 *of return would be higher if the actual life expectancy were less*  
17 *than, and lower if the actual life expectancy were greater than the*  
18 *estimated life expectancy of the insured at the time the viatical or*  
19 *life settlement contract was closed.*

20     (T) *A statement that the purchaser should consult with his or*  
21 *her tax adviser regarding the tax consequences of the purchase of*  
22 *the viatical or life settlement contract or fractionalized or pooled*  
23 *interest therein and, if the purchaser is using retirement funds or*  
24 *accounts for that purchase, whether or not any adverse tax*  
25 *consequences might result from the use of those funds for the*  
26 *purchase of that investment.*

27     (U) *Any other information as may be prescribed by rule of the*  
28 *commissioner.*

29     (r) *This section shall become operative on January 1, 2016.*

30     SEC. 3. *Sections 1.5 and 2.5 of this bill incorporate*  
31 *amendments to Section 25102 of the Corporations Code proposed*  
32 *by both this bill and Senate Bill 978. Sections 1.5 and 2.5 shall*  
33 *only become operative if (1) both bills are enacted and become*  
34 *effective on or before January 1, 2013, (2) each bill amends Section*  
35 *25102 of the Corporations Code, and (3) this bill is enacted after*  
36 *Senate Bill 978, in which case Sections 1 and 2 of this bill shall*  
37 *not become operative.*

38     ~~SEC. 3.~~

39     SEC. 4. *This act is an urgency statute necessary for the*  
40 *immediate preservation of the public peace, health, or safety within*

1 the meaning of Article IV of the Constitution and shall go into  
2 immediate effect. The facts constituting the necessity are:  
3 The Chair of the Securities and Exchange Commission  
4 announced on June 28, 2012, that the commission will fail to meet  
5 the July 4, 2012, deadline for rulemaking to implement the federal  
6 Jumpstart Our Business Startups Act (JOBS Act, Public Law  
7 112-106). The JOBS Act seeks, in somewhat similar fashion to  
8 this act, to increase access to capital for small businesses. Because  
9 the delay in rulemaking by the commission leaves small businesses  
10 without a viable new method of accessing investment funding  
11 needed at the present time for startup and growth stages, which is  
12 a problem addressed by this act, it is necessary that this act take  
13 effect immediately.

O